APPENDIX A — DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED NOVEMBER 18, 1998

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 98-2408—

(Submitted November 5, 1998 Decided November 18, 1998)

MARY ALOUPIS, CHRIS ALOUPIS,

Plaintiffs-Appellants,

v.

JOHN JOSEPH ROOP, CARGILL, INC.

Defendants-Appellees.

Appeal from the United States District Court for the District of Maryland at Baltimore. Marvin J. Garbis, District Judge. (CA-98-2597-MJG).

Before

ERVIN, LUTTIG, and MOTZ,

Circuit Judges.

Appendix A

Mary Aloupis, Chris Aloupis, Appellants Pro se. Scott Douglas Goetseh, Semmes, Bowen & Semmes, Baltimore, Maryland for Appellees.

Opinion: UNPUBLISHED

PER CURIUM:

Mary and Chris Aloupis appeal the district court's order dismissing for lack of jurisdiction their civil action in which they sought damages for injuries sustained in an automobile accident. We have reviewed the record and the district court" opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Aloupis v. Roop No. CA-98-2597-MJG (D. Md Sept 1, 1998). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Appendix A

Subsequent to the decision of the United States Court of Appeals for the Fourth Circuit, the Plaintiffs – Appellants filed a petition for rehearing as shown below:

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED December 29, 1998

No. 98-2408

CA-98-2597-MJG

MARY ALOUPIS; CHRIS ALOUPIS
Plaintiffs Appellants,

v.

JOHN JOSEPH ROOP; CARGILL, INCORPORATED
Defendants Appellees.

ORDER

The Appellants have filed a petition for rehearing. The court denies the petition for rehearing.

FOR THE COURT

/S/ Patricia S. Connor
Clerk

Appendix A

After the rehearing denial, the Appellants received the following mandate from the court, as shown below:

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Filed: January 6, 1999

No. 98-2408

CA-98-2597-MJG

Aloupis v. Roop

MANDATE

The judgement of this court dated 11/18/98 takes effect today.

/s/ Patricia S. Connor
Clerk

APPENDIX B — DECISION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND DECIDED 27 AUGUST 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Mary Aloupis, et ux.	(	
Plaintiff	(	
	(	
Vs.	(	Civil Action
	(	No. MJG-98-2597
John Joseph Roop and	(	
Cargill, Inc.	(	
Defendants	(	

MEMORANDUM AND ORDER

The court has before it Plaintiff's response to Show Cause Order. The court finds that neither a response nor a hearing is necessary.

Plaintiffs have made clear that they are suing the named Defendants and not any court or other government agency. They have also made clear that the relief that they seek from the Defendants is a recovery for damages sustained in an automobile accident. They have further made clear that the underlying dispute has been litigated in the state court system but resulted in what Plaintiffs' contend is an inadequate recovery.

Appendix B

The only conceivable basis for an action for recovery for Plaintiffs automobile negligence claim appears to be the diversity jurisdiction statute, 28 U.S.C. § 1332. However, the Plaintiffs and the Defendants are expressly identified as Maryland citizens. Accordingly, there is no diversity.

Plaintiffs present the contention that because of the nature of their injuries, the citizenship issue should have no bearing in the matter. Plaintiffs are entitled to their view and can, if they wish, ask their Congressional representatives to enact a statute providing Federal jurisdiction for their case. However, on the present state of the law, the action cannot proceed in federal court.

The court finally will note that, as Plaintiff's acknowledge, the case has already been fully litigated in state court. Therefore, even if this court had jurisdiction, the case appears subject to summary dismissal.

For the foregoing reasons, this case shall be DISMISSED for lack of jurisdiction.

SO ORDERED THIS 27TH DAY OF AUGUST, 1998

/S/ Marvin J. Garbis
United States District Judge

APPENDIX C — DECISION OF THE COURT OF SPECIAL APPEALS OF MARYLAND DECIDED JUNE 23, 1998

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1902

September Term, 1997

CHRIS ALOUPIS, et al.

Appellants,

v.

JOHN JOSEPH ROOP, et al

Appellees.

Judges Assigned:
Harrell,
Eyler
Getty, James S. (retired, specially assigned).

Opinion by Harrell, J.

Appendix C

Chris Aloupis, appellant,[1] seeks reversal of a judgment of the Circuit Court of Charles County (Chappelle, J. presiding). Mr. Aloupis, plaintiff below, had sued John Joseph Roop and Cargill, Inc., appellees, for injuries he alleged he suffered in a motor vehicle collision occurring on 8 April 1992. After a four-day trial and following the trial judge's grant of appellant's motion for judgment as to appellees' liability, the jury returned the following verdict, according to the docket entry:

> Jury assesses damages in favor of Plaintiff, Chris Aloupis as follows: Post [sic] medical expenses: 0. future medical expenses: 0. past loss of earnings: 0. Non economic damages $2,000.00. total $2,000.00. Jury assess [sic] damages in favor of Plaintiffs Chris Aloupis and Mary Aloupis for loss of consortium. 0.
>
> Court enters judgment in favor of the Plaintiff, Chris [sic] Aloupis and against the Deft. John Joseph Roop and Cargill, Inc. in the amount of $2,000.00. Verdict Sheet, filed.[2]

After the court denied appellant's trial counsel's motion for new trial and appellant files a pro se motion for reconsideration of the denial of the new trial motion; this appeal was filed pro se. Appellant has proceeded in proper person in the prosecution and briefing of this appeal.

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[1] Appellant's wife, Mary Aloupis, was also a plaintiff below, but did not join in this appeal.

[2] We could find no verdict sheet in the record as transmitted.

Appendix C

ISSUES

Appellant has not framed discretely in his brief any specific issue(s). The flavor of the content of his brief, as we perceive it (and as appellees see it for purposes of determining what to respond to [in their brief]), suggests that appellant questions:

I. Whether the jury's verdict was inconsistent and/or against the weight of the evidence.

II. Whether the trial court abused its discretion in denying his motion for new trial.

Appendix C

For the reasons that follow, we affirm the judgment.

FACTS[3]

Probably because the court entered a judgment as to liability against them, appellees readily concede that, on 8 April 1992, a tractor and trailer owned by Cargill, Inc. and operated by Mr. Roop, struck the rear of a Toyota pick-up truck occupied by Mr. Aloupis. The collision occurred on Mattawoman-Beantown Road, near its intersection with Council Oak Drive, in Charles County, Maryland. As a result of the collision, Mr. and Mrs. Aloupis (Mrs. Aloupis being

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[3] We are constrained greatly in this regard. The only parts of the transcripts of the four day trial, spanning 21-24 July 1997, found in the record as transmitted to us are: (a) the opening statement on 21 July of appellant's trial counsel; (b) the testimony on 22 July of three of appellant's medical experts, Dr. Najmaldin O. Karim, Dr. Carl H. Keller, and Dr. Dennis Fitzgerald; (c) the testimony on 23 July of appelees' medical expert, Dr. David Buckholtz; and, (d) an excerpt of the 24 July closing argument of appellant's counsel. Appellant's record extract contains no part of any of the above trial transcripts. None of the parties' trial exhibits are in the record. Moreover, appellant's brief fails to direct our attention to any specific page or pages of the above transcripts in support of any specific assertions or arguments set forth in his brief.

It does not appear from our perusal of the record that the parties agreed to order a transcription of less than all of the trial testimony (Md. Rule 8-411 (a) (1) (B)) or that this Court ordered less than a complete transcription (Md. Rule 8-460 (a) (1) (C)). Therefore, the record transmitted in this appeal violates Md. Rules 8-411 (a) (1) (A) and 8-413 (a). Appellant's record extract violates Md. Rule 8-504 (a) (3) and (4), among other requirements. We note these shortcomings, not to emphasize that appellant, as a layperson, has been unable to cope with the technical requirements of proper and effective appellate procedure, but to lay the partial foundation for why these shortcomings substantively prevent us from giving meaningful consideration to his grievances.

added as a plaintiff for a loss of consortium claim via an amended complaint) sued appellees in the circuit court for personal injury and property[4] damages due to appellees' negligence.

In his brief in this Court, Mr. Aloupis states "[a]s a result of this impact, [he] sustained the following injuries: head, shoulder, upper back and neck, an inner ear tear, loss of (sexual ability) the intimate relationship with his wife, the relationship with his entire family, permanent brain function damage with short term memory loss." Although he alludes in his brief to "six physician's depositions" as "support" for "evidence related in his case,"[5] we have no indication which, if any, deposition testimony was received in evidence at trial. Mr. Aloupis, in his brief, informs us of the specialty fields of Dr. Karim (neurosurgeon), Dr. Keller (psychiatrist), and Dr. Fitzgerald (ear, nose, and throat), that each was "Board Certified," that Dr. Karim opined that Mr. Aloupis suffered permanent brain damage from the accident, and that Dr. Fitzgerald, "on cross-examination," testified "Mr. Aloupis sustained a tear of the left inner ear complicated by fluid leakage," requiring surgery apparently in the future. Appellant did not characterize what Dr. Keller's medical opinion may have been at trial. Although Mr. and Mrs.

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[4] We have no ability on this record to discern what happened to the property damage claim. We shall ignore it therefor.

[5] In his record extract, Mr. Aloupis includes transcripts of depositions of Drs. Karim, Keller, and Fitzgerald, but not the 174 pages, or any portion, of their trial testimony. He does not in his brief or reply brief cite to any page or pages in either the depositions in his extract or the trial transcript in the record. We shall not remedy this deficiency by our own further toil.

Aloupis apparently testified, as well as a Dr. Zafiropoulos and Peter Aloupis, for the plaintiffs, we have no transcript whatsoever of what these witnesses said.

The defense produced two witnesses, Mr. Roop and Dr. Buckholtz. As judgment for liability was rendered against appellees (and is not contested here), the absence of Mr. Roop's testimony in this record is of no moment. From the portions of Dr. Buckholtz's trial testimony, contained in an appendix to their brief and to which appellees' brief refers us to selected pages, it appears that, after reviewing appellant's pre-accident medical records, the hospital records from the accident, appellant's physicians' records and opinions, and his own examination of appellant and vicarious knowledge of appellant's post-accident physical activities, Dr. Buckholtz essentially opined that Mr. Aloupis had not suffered serious injuries from the accident as alleged, e.g. no inner ear or brain injury.

Following the jury verdict, appellant's trial counsel filed a motion for new trial, which alleged two grounds, in pertinent part, as follows:

> The Court should grant a new trial for the following reasons:
>
> a. The Plaintiffs were prejudiced by the jurors' consideration during its [sic] deliberations matters not in evidence during the trial of this case. Specifically, counsel have learned that jurors observed Plaintiff from the window of the jury room after their lunch break

> while he stood outside in the rain holding an umbrella. Apparently, these observations were discussed and became a focal point of the jury's deliberations and verdict in this case...
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> b. The award of the jury was inadequate in light of the proven damages at trial... Even though Defendant admitted that some injury occurred and in fact that treatment at the emergency room and certain subsequent medical treatment was reasonable, necessary and causally related to the accident, the jury gave no award for past medical expenses. Moreover, the award for pain and suffering was inadequate and can only be explained in the light of their observation of the Plaintiff outside of the Courthouse as previously described.

The court, by order dated 16 September 1997 and docketed on 18 September 1997, denied the motion without elaboration.

Mr. Aloupis, in proper person, filed with the court on 8 October 1997 a motion for reconsideration.[6] In this motion, appellant essentially argued that the jury verdict was contrary to the evidence. He also asserted that the unacceptable verdict was due to some unexplained jury response to his "ethnic background," which background goes unexplained as well.

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[6] On 10 October 1997, Mr. Aloupis filed a letter, dated 8 October 1997, directed to the trial judge further complaining about the jury verdict.

Appendix C

The court denied this motion by order of 31 October 1997, docketed 3 November 1997.[7]

Prologue

We are mindful of the renewed public concern over impediments to meaningful access to the judicial system for the redress of all manner of legal grievances. Not the least of these impediments is the evolved complexity of the legislation, rules, and common law governing how such grievances are brought, prosecuted, and resolved. This complexity, for the most part a necessary state justified quixotically by logic and clarity, sometimes even confounds attorneys. The inherent tensions within the system designed to serve the pursuit of justice in the abstract and the actual attainment of a just result in a given case are often made most apparent when a layperson, such as appellant here, endeavors to represent himself or herself, for whatever reasons, in a matter. Appellant's earnest recognition in his brief of his personal limitations in appreciating how to present his case will be mirrored in this opinion by our equally earnest assessment that, though we considered how we could review the substantive merits of his apparent issues notwithstanding the numerous shortcomings of his efforts to present his case to us, we are unable to reach the conclusions he desires us to reach.

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[7] Prior to the court's order denying the motion for reconsideration, appellant filed this appeal on 14 October 1997 and, at the same time, filed with the circuit court a "petition for a new trial." As the court's jurisdiction for present purposes was circumscribed by the filing of the appeal, it took no action on the petition for new trial (nor was action was called for under the circumstances).

Appendix C

I.

We will ordinarily not interfere with a jury verdict, even one that is inconsistent. Eagle-Picher Indus., Inc. v. Balbos, 84 Md. App. 10, 35-36 (1990), aff'd in part and rev'd in part, 326 Md. 179 (1992). In reaching this conclusion, this Court in Balbos said:

> Inconsistent jury verdicts generally are not sufficient grounds for an appellate court to reverse a jury's verdict. As the Court of Appeals stated [,]... 'That the verdict may have been the result of compromise, or of a mistake on the part of the jury, is possible. But verdicts cannot be upset by speculation or inquiry into such matters.'
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> * * * *
>
> In so holding, we realize that this precedent has previously been applied by Maryland courts only in criminal cases. We believe, however, that the rationale for his principal [sic] is equally valid when applied in civil actions. Here too, we are reluctant 'to interfere with the results of unknown jury interplay' at least without proof of 'actual irregularity.' We recognize that inconsistency may be the product of lenity, mistake, or a compromise to reach unanimity. The continual correction of such matters would undermine the historic role of the jury as the arbiter of questions put to it.

Id. at 35-36 (citations omitted).

We, unlike the jury in the instant case, have not been presented with the trial testimony, for example, of appellant or appellant's wife. It seems reasonable to assume that some part of their testimony bears on appellant's alleged injuries and damages. The jury was presented with the contradictory testimony of appellant's medical expert witnesses versus appellees' medical expert witness. Although appellees, on appeal, have directed our attention to selected portions of Dr. Buckholtz's testimony, appellant has not done likewise with regard to the 176 page transcript of the testimony of the three physicians he refers to in his brief and reply brief.

We shall not engage in a fishing expedition to do for appellant that which he should have done for himself. It is not our task to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain appellant's position. Evans v. Shore Communications, Inc., 112 Md. App. 284, 309 (1996); von Lusch v. State, 31 Md. App. 271, 282 (1976), rev'd on other grounds, 279 Md. 255 (1977). He has not persuaded us that this case presents the "truly rare circumstances where a jury's verdict is irreconcilably defective." He has not demonstrated that the jury's verdict in this case was not the product of its determination to find incredible or unpersuasive his witnesses (lay and medical alike) in large part and, instead, to accept appellees' medical witness's opinions, substantiated as they were.

Though it will be of small consolation to appellant here, he has been treated no differently in substance than his

spiritual predecessor was by us in Tretick v. Layman, 95 Md. App. 62 (1993).

II.

The decision to grant a new trial is left to the sound discretion of the trial court, and the court's exercise of that discretion will generally not be disturbed on appeal. Buck v. Cam's Broadloom Rugs, Inc., 328 Md. 51, 57 (1992) (holding that denial of a new trial motion would not be disturbed in the absence of "extraordinary" or "compelling" circumstances)' Mack v. State, 300 Md. 583, 600 (1984). As the Court of Appeals explained in Buck, 328 Md. at 58-59, the scope of the trial court's discretion is not fixed and immutable. Instead, the courts discretion will expand or contract depending upon the nature of the factors being considered. Where the motion for a new trial was grounded solely on an assertion that the jury's verdict was against the weight of the evidence the court's discretion is broad, and denial of a motion for new trial will rarely be disturbed on appeal. Id. at 59-61.

In the instant case, by not including such arguments in his initial brief, appellant has abandoned on appeal his assertions made in the trial court that a new trial was warranted because the jury verdict was the product of some improper response to this "ethnic background" or due to the jury's observations during deliberations of him in the parking

lot in the rain holding an umbrella.[8] Jacober v. High Hill Realty, Inc., 22 Md. App. 115 (1974). Although appellant attempted in his reply brief to pay lip service to the aforegoing arguments and resurrect them, it was too little and too late. See Federal Land Bank of Baltimore, Inc. v. Esham, 43 Md. App. 446 (1979). Thus, appellant is left only with the argument that Judge Chappelle abused his discretion in denying the motion for new trial because the verdict was against the weight of the evidence.

As noted early by us, generally discretion is not fixed or uniform. Rather, "it will expand or contract depending upon the nature of factors being considered." Buck, 328 Md. at 57. In Thodos v. Bland, 75 Md. App. 700 (1988), we explained:

> [W]hen the consequences of a particular exercise of discretion are clear, i.e. one result is clearly unjust and the other, clearly not, the limits of the exercise are narrow. On the other hand, when the consequences are not so clear, i.e., no result is clearly just or unjust, the limits of the exercise of discretion are considerably broader. Indeed, in the latter situation, we will not find an abuse of discretion whichever way the trial court may choose to exercise discretion. Pertinent to each of these situations, is the additional consideration, whether, be it just or unjust, the

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[8]On the record transmitted to us, we have not the remotest idea what relevancy or materiality these assertions could have had on the question of whether a new trial should have been appropriate. We image Judge Chappelle was as puzzled as we are.

> result is lawful. If the result is unjust, but also lawful, the mere fact that it was achieved by the trial judge's exercise of discretion will not render that exercise an abuse of discretion.

Id. At 712 (citations omitted).

In considering whether a trial judge abused his or her discretion in acting on a motion for new trial, we are mindful also that the judge had the ability and responsibility to assess the credibility of witnesses in that evaluative process, an asset denied to an appellate tribunal.

For the very same reasons explained else where in this opinion, we are unable to say that the trial judge's decision to deny the motion for a new trial fell outside the range of his permitted discretion.

JUDGEMENT AFFIRMED
APPELLANT TO PAY
THE COSTS.

APPENDIX D — DECISION OF THE CIRCUIT COURT OF CHARLES COUNTY, MARYLAND DECIDED SEPTEMBER 18, 1997

IN THE CIRCUIT COURT OF
CHARLES COUNTY, MARYLAND

Case No.: CV-94-1750

CHRIS ALOUPIS, et ux

Plaintiffs,

v.

JOHN JOSEPH ROOP, et al

Defendants.

ORDER

After reviewing plaintiff's Motion for New Trial and defendant's response thereto, it is this 16th day of September 1997

ORDERED that plaintiff's Motion for New Trial is denied.

FILED SEPTEMBER 18, 1997

/S/ Steven J. Chappelle
Judge, Circuit Court for
Charles County

APPENDIX E — BASIS FOR THE DECISION OF THE MARYLAND CIRCUIT COURT OF CHARLES COUNTY (GIVEN IN APPENDIX D)

When the judgment rendered by the jury in the petitioner's case, the presiding judge, the honorable S. J. Chappelle, reminded the jury that there were fifty thousand dollars in medical bills outstanding, however, the jury refused to change its verdict.

In response to the jury's verdict, the plaintiff's counsel immediately filed "PLAINTIFFS' MOTION FOR A NEW TRIAL". The defense counsel then filed "DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR NEW TRIAL". Both of these motions are presented in this appendix along with appropriate remarks by the petitioner.

Apparently, the honorable Judge Chappelle was greatly persuaded by the Defendants' motion so that he rendered the opinion which is given in APPENDIX D and which was very favorable to the defense and very unfair and unjust to the plaintiff.

Up to this point, the plaintiff's counsel was working on a contingency fee basis so that when Judge Chappelle denied the plaintiff's motion for a new trial, the plaintiff's counsel requested appropriate fees in order to appeal the case to the higher court.

The plaintiff, however, unable to pay a fee of many thousands of dollars plus hundreds of dollars per hour, had no choice but to appeal the case Pro se.

Appendix E

In addition to the filing of the PLAINTIFFS' MOTION FOR A NEW TRIAL by the plaintiff's attorney, the plaintiff, having to go Pro se, filed a "MOTION FOR RECONSIDERATION" to the Honorable Judge S. Chappelle. This motion is also included in the instant appendix.

In this "Motion" the plaintiff tells the Honorable Judge that "the verdict which the jury rendered on July 24, 1997 was biased, prejudiced, discriminated, and unconstitutional, and without foundation or merit because of the plaintiff's ethnic background." This statement, of course, is only a belief on the part of the plaintiff and has no basis in fact; however; the plaintiff feels it is the only way he could explain this bizarre verdict. As to the constitutionality issue, the plaintiff contends that since the Constitution of the United States is the most just set of laws we have, anything which is unjust must be unconstitutional (or must break these laws which are based on just principles).

In this discussion, the following items are included:

1. PLAINTIFF'S MOTION FOR A NEW TRIAL
   A. Petitioner's Comments Regarding Plaintiff's Motion for a New Trial
2. DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR NEW TRIAL
   A. Petitioner's Comments regarding Defendant's Response to Plaintiff's Motion for New Trial
3. MOTION FOR RECONSIDERATION (by the plaintiff)
   A. Petitioner's Comments Regarding Plaintiff's Motion for Reconsideration

Appendix E

1. PLAINTIFFS' MOTION FOR NEW TRIAL IN THE CIRCUIT COURT FOR CHARLES COUNTRY, MARYLAND

CHRIS ALOUPIS and MARY ALOUPIS : Case No. 94-1750

Plaintiffs

Filed August 1, 1997

v.

JOHN JOSEPH ROOP, ET AL.

Defendant

PLAINTIFFS' MOTION FOR A NEW TRIAL

COMES NOW, the Plaintiffs, Chris and Mary Aloupis, by and through their respective counsel and pursuant to Maryland Rule 2-533 respectfully move for a new trial in the above captioned matter, in support thereof, states as follows:

1. The above referenced matter went to trial before the Honorable Steven Chappelle in this Honorable Court on July 21, 1997 through July 24, 1997. On July 24, 1997, after the Court had directed a verdict in favor of the Plaintiff on the issue of liability, the jury handed down a verdict in the amount of $2,000.00 for pain and suffering only. No award of damages was granted for past medical expenses, past lost wages, future medical expenses or loss of consortium.

Appendix E

2. The Court should grant a new trial for the following reasons:

a. The Plaintiffs were prejudiced by the jurors' consideration during its deliberations matters not in evidence during the trial of this case. Specifically, counsel have learned that jurors observed Plaintiff from the window of the jury room after their lunch break while he stood outside in the rain holding an umbrella. Apparently, these observations were discussed and became a focal point of the jury's deliberations and verdict in this case. According to Maryland case law, the consideration of such evidence by the jury is sufficient grounds for a Motion for New Trial. See, *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 58, 612A.2d 1294 (1992). See also *Smith v. Pearre*, 96 Md. App. 376, 391, 625 A.2d 349 (1993).

b. The award of the jury was inadequate in light of the proven damages at trial. As stated in *Greenstein v. Meister*, 279 Md. 275, 368 A.2d 451 (1977), such an award can be sufficient grounds for a Motion for New Trial. Even though Defendant admitted that some injury occurred and in fact that treatment at the emergency room and certain subsequent medical treatment was reasonable, necessary and causally related to the accident, the jury gave no award for past medical expenses. Moreover, the award for pain and suffering was inadequate and can only be explained in the light of their observation of the Plaintiff outside of the Courthouse as previously described.

Appendix E

3. It is respectfully submitted that the interests of justice require that the Court grant Plaintiff a new trial.

WHEREFORE, Plaintiff respectfully requests the following relief:

1. That this Honorable Court grant them a new trial.

2. That this Honorable Court hold a hearing on Plaintiffs' Motion for New Trial.

3. That at the hearing, the Court issue summons for the attendance of the jurors who can at that point be questioned concerning the allegations of this Motion.

4. That this Honorable Court permit Plaintiff to supplement this Motion with a legal memorandum concerning the issues raised.

5. Such further and additional relief as justice may require under the circumstances.

/S/ Richard A. Finci

/S/ Kurt W. Wolfgang

/S/ Donna G. Burch
Clerk

Appendix E

A. Petitioner's Comments Regarding Plaintiff's Motion for New Trial

The Petitioner in this case makes the following comments and admissions:

1. The Plaintiff has no idea where plaintiff's counsel obtains the information alleged in the Motion for New Trial.

2. The Plaintiff did not enter the courtroom in a wheelchair, wearing a neck brace or anything of this sort, however, is this the only criteria on which damages are awarded?

3. Since the Period of time between the accident and the trial was approximately five years, the plaintiff has learned to compensate for his disability; however, this should not be mistaken for a lack of disability.

4. The Plaintiff may have failed in articulating his problems, however, objective evidence and expert testimony speak louder and are much more reliable than words or observations.

5. The Plaintiff could have been observed at any time during the five years preceding the trial; for he had nothing to hide and most certainly did not behave any differently in any parking lot, or wherever, although it may have appeared to an observer that he did.

6. The Plaintiff's counsel, in trying to understand the reason behind this bizarre verdict which awarded the Plaintiff no compensatory damages, was forced to look for an explanation outside of the courtroom; for he certainly could not explain it in any other way.

Appendix E

2. DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR NEW TRIAL

CHRIS ALOUPIS, et ux.,	*	**IN THE**
Plaintiff	*	**CIRCUIT COURT**
v.	*	**OF**
JOHN JOSEPH ROOP, et al.	*	**CHARLES COUNTY,**
Defendants	*	**Case NO.: CV 941750**

* * * * * * * * *

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR NEW TRIAL

THE DEFENDANTS, John Joseph Roop and Cargill, Inc., through their attorneys, Scott D. Goetsch and Semmes, Bowen & Semmes, pursuant to Maryland Rule 2-311(b), respectfully respond to Plaintiffs' Motion for New Trial and state as follows:

INTRODUCTION

The plaintiffs filed this case on or about September 20, 1994. The case proceeded to trial before the Honorable Stephen Chappelle on July 21, 1997, and carried through July 24, 1997. Judge Chappelle entered a verdict in favor of the Plaintiff's on the issue of liability. The jury then awarded the plaintiff $2,000.00 of non-economic loss.

Appendix I:

On August 1, 1997 the plaintiffs filed their Motion for New Trial,[1] alleging that they were prejudiced because members of the jury looked out the window and observed the plaintiff moving and gesturing in a manner inconsistent with this trial testimony. This is alleged to have been improper. Furthermore, the Plaintiffs claim that the award of the jury was inadequate in light of the proven damages at trial, and was rendered solely due to the jury's observation of the Plaintiff from the window of the jury room.

RESPONSE

The plaintiff's contention that the jurors acted improperly by looking out the window of the jury deliberation room, and observing the plaintiff moving and gesturing in a manner inconsistent with his trial testimony, is without merits. Initially, it is a long-standing rule of Maryland law that jurors will not be heard, by affidavit or otherwise, to impeach their own verdict. Consequently, the evidence proffered by plaintiff's counsel, but not yet produced, cannot be considered in support of their motion. Further, the jurors did not in any way act improperly by looking out the window. Finally, the jury's ultimate finding and award was supported by the evidence, and cannot be grounds for a new trial.

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[1] While Plaintiff's Motion for New Trial was apparently filed on this date, it was not received by defense counsel until August 26, 1997. Further, Plaintiffs counsel indicated that affidavits from jurors were being prepared. No affidavits have been received by counsel for the defense.

Appendix E

PROFFERED JUROR AFFIDAVITS AND JUROR TESTIMONY

Plaintiffs have proffered that they will produce affidavits from jurors supporting their contention that members of the jury based their verdict upon observations of the plaintiff that were made when they looked out the window during their deliberations. Plaintiffs have also requested this Court to issue subpoenas to various jurors in order to solicit testimony on this same issue, the Maryland courts have long held that a juror will not be heard to impeach his or her verdict. Oxtoby v. McGowan, 294 Md. 83, 101, 447 A.2d 860, 870 (1982); Williams v. State, 204 Md. 55, 67, 102, A.2d 714, 720 (1954); Browne v. Browne, 22 Md. 103, 113 (1864); Aron v. Brock, 1997 Md. App. LEXIS 91 (Filed May 29, 1997); Smith v. Pearre, 96 Md. App. 376, 387-88, 625 A.2d 349, 355 (1993), cert. Denied, 322 Md. 454 (1993); Wemsing v. General Motor Corp., 298 Md. 406, 411, 470 A.2d 802, 804 (1984); Braun v. Ford Motor Co., 32 Md. App. 545, 551, 363 A.2d 562, 566 (1976); Dixon v. State, 27 Md. App. 443, 448, 340 A.2d 396, 400 (1975), cert. denied, 276 Md. 741 (1975).

The Court of Appeals in Williams v. State, supra, stated that

> [i]n Maryland there has been no deviation from the rule that what takes place in the jury-room ought to be, and it generally is, known only to the jurors themselves and that their testimony cannot in general be heard to impeach their verdict, whether the conduct objected to be misbehavior or mistake.

Williams, 204 Md. At 70, 102 A.2d at 721

Furthermore, this rule extends to juror affidavits as well. In Wernsing v. General Motors Corp., supra, defendant sought a new trial because of juror misconduct by means of a dictionary being used during deliberation. The defendant sought to introduce several affidavits from jurors supporting the misconduct claim. The court found that the post-verdict affidavits were a "particularly gross example of soliciting reconstruction of a juror's mental processes in reach the verdict." Wernsing, 298 Md. At 412, 470 A.2d at 805. The court ultimately held that this type of tampering with "verdict finality" is not permitted under Maryland law. Id.

Even if the plaintiffs' proffered evidence were to be considered, the alleged actions of the jurors were not improper. The jurors merely looked out the window, and observed the plaintiff in much the same way they did during the entire trial. The jurors did not conduct their own investigation, did not go to the plaintiff's home, and otherwise did not seek out additional information on which to base their verdict. They simply looked out the window.

INADEQUACY OF THE AWARD

In Maryland, the question of whether a verdict is either excessive or inadequate is fine for the trial court, exercising its sound discretion. Kirkpatrick v. Zimmerman, 257 Md. 215, 217, 262 A.2d 531, 532 (1970); Kujawa v. Baltimore Transit Co., 224 Md. 195, 209, 167 A.2d 96, 102 (1961). In Kujawa, the claim for damages by the Plaintiffs arose out of a collision between a bus and a car operated by the Plaintiffs. There was no dispute as to the liability of the Defendants, but the jury assessed a verdict of $3,315. The trial court denied Plaintiffs' request for a new trial.

Appendix E

Like the Kujawa case, the case before this court presents a similar situation. The Plaintiffs have failed to present a sufficient basis for granting their claim as to the inadequacy of damages. The jury heard testimony, observed the Plaintiff on the stand, and reached a verdict. As found in Zimmerman, supra, the jury might have been prompted to give an award in the amount it did for several reasons. In the instant case, there certainly was ample evidence introduced that Plaintiff's condition was not at all as he claimed, and that he did not suffer any injury at all.

It is not, however, the duty of the trial court to probe into the minds of the jurors and invade the veil of secrecy that protects the jury process and deliberations. See Williams, supra. Notwithstanding the juror affidavits that counsel claims he will obtain, there is no basis for a new trial.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Defendants, John Joseph Roop and Cargill, Inc. respectfully request that Plaintiff's Motion for New Trial be denied.

/s/ Scott D. Goetsch
Attorney for Defendants
John Joseph Roop and
Cargill, Inc.

Appendix E

A Petitioner's Comments Regarding Defendant's Response To Plaintiff's Motion for New Trial

The Plaintiff makes the following comments regarding defendant's response:

1. Defense counsel's prejudicial remarks which he had made throughout this entire trial are evident in this response when he tells us that the jury "observed the plaintiff moving and gesturing in a manner inconsistent with his trial testimony" (App. 28a) when he very well knows that the Plaintiff's counsel made no similar statement in "PLAINTIFF'S MOTION FOR NEW TRIAL". The defense counsel makes this statement not once but twice (App. 28a).

2. The defense counsel tells us that he has not received any affidavits from plaintiff's counsel, however, the plaintiff's counsel merely requested the Court to issue summons to the jurors since the court denied this request, no summons were sent to the jurors or to the defense counsel.

3. Clearly, the defense counsel rebuts the plaintiff's first reason for the granting of a new trail on the basis that a jury cannot impeach its own verdict. The second reason given by the plaintiff's counsel which is the inadequacy of the award, however, is an entirely different matter.

4. In the matter of the inadequacy of the award, the defense counsel offers two cases (App. 30a) whose validity is questionable when applied to personal injury cases and whose scope is relatively narrow and pales in comparison to the case law which is both well established and controlling.

Appendix E

All opinions related to damages in tort actions teach us that the primary function of a jury is to fix the amount of damages at their discretion, however, the jury is not given carte blanche and cannot ignore undisputed evidence such as medical bills and arbitrarily deny any recovery. In other words, there are limits in any given situation beyond which juries cannot go.

Thompson v. Cooper, 551 So 2d 1030 (Ala. 1989) states:

> "The jury was not free to assess damages in an amount less than those special damages proven by way of medical expenses and loss of earnings, that proximately resulted from the culpable conduct of the defendant, the jury was duty bound to award substantial compensation, including damages for proven medical expenses and loss of earning and earning capacity, as well as for physical pain, mental suffering and permanent injury"

Brannon v. Webster, 562 So. 2d 1337 (Ala. Civ. App 1990) is another case which is controlling over the defendant's case and tells us that:

> "A jury verdict will be overturned on appeal where the damages awarded is not sufficient to cover the proven expenses."

Appendix I:

A more definitive case, *DeMoss v. Brown Cab Co. Inc.*, 218 Iowa 77, 254 N.W. 17 (1934) which is controlling over the defendant's case is:

> "Failure to award damages for medical bills, where required, represents a reversible error."

Here we note that a reversible error is by definition an error substantially affecting plaintiff's legal rights and obligations which if uncorrected would result in a miscarriage of justice and which justifies reversing a judgement in the lower court even if the error was not objected to in the lower court; synonymous with prejudicial error."

In this particular case, the error was not corrected and it resulted in a miscarriage of justice. In addition, the added "obligation" placed on the plaintiff to appeal his case was a burden both financially and mentally, which he was not able to overcome.

Now, as mentioned in Plaintiff's Motion for New Trial (App. 24a) medical treatment received by the plaintiff was reasonable, necessary, and causally related to the accident and was never objected to by the defense, and since the physicians testified as to its validity, we have to conclude that the Courts erred in not reversing the jury's judgement.

According to the definition offered above, the error in not reversing the jury's judgment is not only prejudicial, but also "affects the plaintiff's legal rights". When the petitioner discusses the judgment handed down by the Court of Special

Appeals of Maryland, he will also show how this judgment violates his rights under the laws of the U.S. Constitution.

Under INADEQUACY OF THE AWARD, the defense counsel gives us the *Kujawa* case as precedent which is supposed to be against the PLAINTIFF'S MOTION FOR NEW TRIAL, and which is somewhat limited in scope since in awarding damages, a comparison of two different cases is improper. *Kaiser v. Stathas*, 263 N.W. 2d 522 (Iowa 1978) states:

> "In a case involving the granting or denial of a motion for a new trial where it is alleged the verdict was too large or too small precedents are of little value. Each case must be decided by relating its own unique circumstances to certain well established principals."

In closing, the defense counsel makes his most ludicrous statement yet, and that is that the plaintiff was not hurt or did not suffer any injury at all.

This statement, of course, is based on the testimony of his one and only expert witness, who by his own admission is a neurologist who specializes in Medical/Legal matters but who is not a neurosurgeon, he is not an ear, nose and throat specialist (otolaryngologist) and is not either a trained psychiatrist or a trained orthopedic surgeon, but who is very persuasive and who is quick to label someone with the standard label of a malingerer and a scammer.

On the other hand, the plaintiff has numerous lay witnesses, who have known him for many years, he has expert

opinions from a neurosurgeon, who has articles published in neurosurgery journals, and who is not only familiar with all MRI and CAT scan techniques, but who has also performed many operations verifying the various instrumental findings and who has testified under oath that the Plaintiff has suffered brain damage.

In addition, the plaintiff has also the opinion of an expert in psychiatry, an expert in otolaryngology who has published twelve articles including four articles on a condition known to specialists as perilymphatic fistula. This condition is caused by a sudden pressure change on the inner ear or a trauma to the head. This specialist has testified that the plaintiff has this condition, which is known generally as a rupture of the inner ear.

The plaintiff also has an expert in orthopedic surgery who has testified in a sworn deposition, and which was mentioned in Court, that the Plaintiff had suffered a rotator cuff tear similar to that suffered by many athletes under physical contact and which was never controverted by anyone, including the defense witness.

Now in view of all this evidence, the defense counsel tells us that the plaintiff suffered no injury at all although his own witness concedes that although there was no brain damage, there was soft tissue damage as well as some stretching of the nerves which could cause pain for several months.

Now let us for a moment assume that the defense witness is correct and everyone else, with the exception of the orthopedic surgeon is wrong. Now how is the plaintiff to

know the extent of his injuries unless he fulfills his duty and obligation which by law is to obtain medical care and follow his physician's advice.

Note: "It is uniformly held to be the duty of one who has suffered a personal injury as a result of the negligence of another to exercise due **care** to mitigate damages by having his injury treated by a physician or surgeon,"

Also: "Duty to Follow Advice of Physician."

> "An injured party not only has the obligation to obtain the services of a competent physician but he is also under a duty to exercise ordinary care to follow the advice of a physician in regard to treatment and care of the injury"

see § 4.02 [2] supra

Also: *University of Ariz. Health Science Center v. Superior Court of State in and for Maricopa County*, 667 P. 2d 1294 (Ariz. 1983).

Now, under these circumstances, how can a plaintiff, regardless of the severity of his injuries, receive no compensation for medical bills?

The defendant's argument then is without merit and should have been rejected.

Taking everything discussed here into account, is it any wonder that the plaintiff feels and expresses same in this MOTION FOR RECONSIDERATION to the Circuit Court of

Charles County, Maryland claiming that the jury verdict was biased, prejudicial, discriminatory, and unconstitutional and thus raising a Federal question. Not unlike the plaintiff's counsel, the plaintiff was also at a loss to explain the bizarre verdict, which caught everyone in the courtroom, including the Judge, by surprise.

The defense counsel is quite right in saying that it is not the duty of the trial court to probe into the minds of the jurors; however, as it turns out it is not necessary for the Court to do so since all well establish opinion is that the jury award itself is evidence enough to show that the award was motivated by bias, passion or prejudice.

In his MOTION FOR RECONSIDERATION, the plaintiff tells the Judge that the judgment was "unconstitutional", etc. The above argument however, shows that, although the plaintiff may be right, we are not able to probe the minds of the jurors and it is for this very reason that there is no requirement to do so. *Bressler v. Dannon Yogurt*, 573 A.2d 562 (Pa. Super. Ct. 1990) tells us:

> "The amount of the verdict in a personal injury action, which is an issue for the jury, will rarely be set aside as inadequate on appeal. However, inadequacy of the verdict will be found and a new trial ordered where the verdict is so inadequate as to indicate passion, prejudice, partiality or corruption, or in some instances, where there was a vital misapprehension or mistake on the part of the jury, or when it clearly appears from uncontradicted evidence ... that the amount of the verdict bears no

> reasonable relation to the loss suffered by the Plaintiff, or, according to some of the cases, where, otherwise, there has been an evident failure of justice to the Plaintiff or where the award is so inadequate that it should not be permitted to stand."

Also, *Austria v. Donovan*, 169 So.2d 377 (Fla. Dist. Ct. App 1977) tells us:

> "A new trial was ordered, when the jury verdict was apparently less than the medical bills and the automobile damage and there was evidence of pain and suffering and loss of earnings."

Here, we clearly have a Constitutional question which only the Supreme Court of the United States can answer and that is, "Are state laws which are applied to personal injury cases and which allow a judge or jury to ignore evidence such as medical bills proper?" The defense counsel argues that it is all up to the court's discretion. This implies, of course, that the courts can award any ridiculous amount and still be within the bounds of their authority. This, however, is in conflict with an overwhelming body of opinion, which says in essence that the jury's award has to at least pay justifiable medical bills. Such limitless laws so heavily relied upon by the Courts of Maryland have now become a Federal question. Later, the petitioner will show how such laws applied to his situation violate his right of due process of law given to him by the U. S. Constitution. To summarize, the defense counsel's arguments then we can say that the judge and jury, at their discretion, can decide what medical expenses are necessary

and appropriate regardless of medical opinion. Apparently, in the case of the plaintiff, the jury and judge decided that the plaintiff's claim to medical expenses was not credible, even though all medical experts testified to the contrary; which makes no sense at all.

The Supreme Court then has to decide whether citizens of the United States who are involved in accidents and decide to get medical treatment are doing it at their own risk, since a jury can later deny claims to such necessary treatment on the basis that they do not feel that these treatments were necessary.

Note: The following is the jury award which was affirmed by the Honorable Judge S. Chappelle of the Maryland Circuit Court for Charles County.

Jury Award

> Jury assesses damages in favor of Plaintiff, Chris Aloupis as follows: Post [sic] medical expenses: 0. Future medical expenses: 0. Past loss of earnings: 0. Non economic damages: $2,000.00. Jury assess [sic] damages in favor of plaintiff Chris Aloupis and Mary Aloupis for loss of consortium: 0.
>
> Court enters judgment in favor of Plaintiff, Chris [sic] Aloupis, and against the Defendant John Joseph Roop and Cargill, Inc. in the amount of $2,000.00. Verdict sheet, filed.
>
> Medical bills: approximately $50,000.00

Appendix E

3. MOTION FOR RECONSIDERATION

[By the Plaintiff]

HON. JUDGE STEPHEN CHAPPELLE

CIRCUIT COURT OF CHARLES COUNTY MARYLAND

Re: Chris Aloupis v. John Joseph Roop, et al. and Cargill, Inc.

In the Circuit Court for Charles County, Maryland Case No. CV 94-1750

MOTION FOR RECONSIDERATION

Dear Sir:

A motion on the above captioned matter was filed with this Court, requesting a new trial by plaintiff's attorney, Richard Finci. In response to this request, Motion dated September 16, 1997 was denied by the Court. No grounds for this action taken were specified by the Court that warrant such denial.

In the above case, the plaintiff states that the verdict, which the jury rendered on July 24, 1997 was biased, prejudiced, discriminated, and unconstitutional, and without foundation or merit, because of the plaintiff's ethnic background. The Courts instructions to the Jury before retiring for deliberation were totally ignored, as well as the evidence and oral testimony of the Plaintiff's witnesses and Doctors. Medical

evidence and tests in this case clearly supported the allegations that were presented during the trial by the prosecution. The plaintiff states in this case that he has suffered substantial damages since this accident occurred. The plaintiff has experienced pain and suffering for more than six years, and according to his physicians, he will have to endure these problems for the rest of his life. This cannot be ignored by the law. Someone has to be held accountable for their actions and for this tragedy that has disrupted his life and took away his ability to function as a normal human being. The records documented in Court clearly defines that the plaintiff was never charged with any contributory negligence on his part, and he should not be penalized and made to suffer the rest of his life, mentally, physically, and financially without being compensated for his losses due to someone's irresponsibility and negligence. On (Introduction) Defense Council stated that Judge Chappelle entered a verdict in favor of the Plaintiff on the issue of liability. The Jury then awarded the Plaintiff $2,000 of non-economic loss.

To set the record straight, the Plaintiff rebuts the defense Council's statement of non-economic loss. The $2,000 awarded by the Jury was for future medical expenses and not for non-economic loss.

Council in the Motion for New Trial also stated that the Court of Appeals in Williams v. State Supra, stated that

> "In Maryland there has been no deviation from the rule that what takes place in the Jury-room ought and it generally is known only to the

Appendix E

Jurors themselves and that their verdict whether the Conduct objected to be misbehavior or mistake."

Williams, 204 Md At 70, 102 A.2d At 721

Council also stated that the Maryland Courts have long held that a Juror will not be heard to impeach his or her verdict. 294 MD, 83, 101, 447 A.2d 860, 870 (1982). Plaintiff does not dispute Defense Council findings, but states as follows: In the Food Lion case where the jury awarded $5.5M, the Judge, at his discretion, found the judgement too excessive and reduced it to $315K. In a case where a Jury renders an unjust verdict, it is at the Court's discretion, if it feels there is a discrepancy involved, to set aside the verdict and award a new trial.

CONCLUSION OF THIS MOTION

Wherefore, the Plaintiff respectfully prays that the Honorable Court exercise its powers in good faith and judgement by awarding him a new trial, a change of venue, and an attempt by Defense Counsel to strike this motion be denied.

Sincerely with respect

/s/ Chris Aloupis

Chris Aloupis, Esq, Pro Se
2415 Shade Oak Court
Waldorf, Maryland 20601

Appendix E

A. Petitioner's Comments Regarding Plaintiff's Motion for Reconsideration

We can easily see by the plaintiff's remarks contained in this Motion that he has raised a Federal question with the Honorable Judge of the Court of first instant. Although the plaintiff, not being an attorney, fails to produce cases, etc., to support his allegations, it is fairly obvious that he considers the verdict handed down by the Court of first instant, or the Circuit Court of Charles County of Maryland to be highly unjust.

In this MOTION, the plaintiff also is telling the Honorable Judge, by giving him a simple example, that if the judges, using their discretion, can alter unreasonably high jury awards then the same principle should also apply to jury awards which are extremely inadequate.

APPENDIX F — BASIS FOR THE DECISION OF THE COURT OF SPECIAL APPEALS OF MARYLAND
[Given in Appendix C]

1. PLAINTIFF'S NOTICE OF APPEAL TO THE COURT OF SPECIAL APPEALS OF MARYLAND

IN THE CIRCUIT COURT OF CHARLES COUNTY MARYLAND

CASE NO. CV 94-1750

Chris Aloupis
Plaintiff

v.

John Joseph Roop, Et Al
Defendant

NOTICE OF APPEAL

Please note that the Plaintiff appeals the verdict in regard to the above captioned matter to the Court of Special Appeals of Maryland.

/s/ CHRIS ALOUPIS

Appendix F

2. PLAINTIFF'S PETITION FOR NEW TRIAL IN THE COURT OF SPECIAL APPEALS OF MARYLAND

Case No. CV94-1750

Chris Aloupis
Plaintiff

v.

John Joseph Roop and Cargill, Inc.
Defendants

PETITION FOR NEW TRIAL

Comes now the Plaintiff, Chris Aloupis, Pro Se, sues defendants John Joseph Roop, and Cargill, Inc. is petitioning the Honorable Court and states as follows:

1. Plaintiff, Chris Aloupis, is a resident of Charles County, Maryland and a citizen of the State of Maryland.

2. Defendant, John Joseph Roop, is a resident of Frederick County, Maryland, a citizen of the State of Maryland. Defendant Roop was operating a tractor-trailer owned by Defendant Cargill, Inc. on the date, time and place of this accident.

3. Defendant, Cargill, Inc. is incorporated under the laws of the State of Maryland with a principle place of business in Walkersville, Maryland, in Frederick county, in

the State of Maryland. Cargill, Inc. owned the tractor-trailer which struck plaintiff.

COUNT I – NEGLIGENCE

4. Plaintiff incorporates the allegations of Paragraphs 1-3 and further states as follows: On the day of the accident in question, which occurred on April 8, 1992, approximately between 1:00 and 1:30 PM. While driving his small Toyota pick-up truck, the plaintiff was involved in a rear-end collision with the defendant's 18-wheeler tractor-trailer that was traveling between 40-50 miles per hour.

5. As a result of this collision, the plaintiff sustained permanent injuries, including and limited in scope to brain injury, neck and shoulder, upper back damage, dizzy spells, blackouts, short-term memory loss, including the intimate (sexual) relationship with this wife, and the close relationship with the entire family.

6. That after two postponements by the defense attorney, the trail in the Case No. (CV94-1750) Aloupis v. Roop was set forth for trial in the Circuit Court of Charles County, Maryland, before the Honorable Judge Steven Chappelle, presiding.

7. Where after the case had entered its sixth year, the trial was schedule for litigation by the Court from July 21 to July 25, 1997.

Appendix F

8. The prosecution in the case presented oral and documented testimony provided by three Board Certified physicians, a neurological surgeon, a psychiatrist, and an otolaryngology (ENT) physicians. Also, a report on the findings from a deposition provided by an orthopedic surgeon. Including and not limited to tests performed in order to support the allegations in this matter.

9. Where after three days of the trial, the Judge instructed the Jury before retiring for a verdict to deliberate the out-come of this case. After approximately three hours of deliberation, the Jury's verdict was as follows: the plaintiff was awarded NO compensation on medical or doctor bills (which have accumulated to more than $50,000). NO wage loss, past present or future, No physical damages, NO compensation for loss of martial relationship (Loss of Consortium suit). The only award was $2,000.00 for future medical expenses/treatment. The plaintiff in this case was never charged with any contributory negligence.

10. Council for plaintiff filed a MOTION FOR NEW TRIAL pursuant to Maryland Rule 2-533. That Motion was denied by the Court.

11. That in the above captioned Petition, the plaintiff states that the jury did not abide by the Judge's instructions and the verdict they rendered on July 24, 1997 was (biased, prejudiced, discriminating, and unconstitutional) and without foundations or merits because of the plaintiff's ethnic background.

Appendix F

12. Wherefore, the Plaintiff in the above petition prays the Honorable Court of Special Appeals review this appeal in good faith and judgement, and to reinstate his rights for a new trial and a change of venue and to deny any attempt by defendants John Joseph Roop and Cargill, Inc. to strike this petition.

Sincerely with respect
/s/ Chris Aloupis, Pro Se

Appendix F

3. Petitioner's Comments Regarding Appellee's Brief Submitted to the Court of Special Appeals of Maryland [Not Submitted Here]

In his brief to the Court, the appellee is in essence telling the Court that the appellant is not a very good lawyer and that he made all these mistakes and that his mistakes should be used against him and the Court is considering nothing else. He is absolutely correct, of course, as far as the appellants skill as a lawyer.

Now in his brief, the counsel for the appellee tells us the following:

1. Because of the obvious mistakes the appellant has made, the Court should decline his appeal.

2. The judge of the Circuit Court "PROPERLY DENIED" appellant's MOTION FOR NEW TRIAL.

3. The jury is always right and their judgment is always correct.

4. Appellant's MOTION FOR NEW TRIAL was denied.

5. Appellant asked for reconsideration and denied again.

6. The court "properly" denied appellant's MOTION FOR NEW TRIAL since there was "ample evidence" to support the jury's verdict — in other words, the jury's verdict was correct and proper in all respects.

Appendix F

7. The appellee introduced evidence at the trial showing that the appellant had not suffered injury.

8. Appellant's claims are not credible.

9. Presents evidence, Dr. Buckholtz's opinions.

10. Claims ample evidence at trial that plaintiff was not injured.

11. Circuit Court Judge PROPERLY denied appellant's MOTION FOR NEW TRIAL.

12. Produces references which shows that a new trial can be granted for 'extraordinary' and 'compelling' reasons only but that this was neither 'extraordinary' or 'compelling'.

13. Appellee tells us that since the appellant did not include any evidence from the trial, he cannot be considered for relief. Reminds us fourteen times.

14. Jury verdict, which is inconsistent, is of no matter.

15. The jury was right, because there was much evidence based on Dr. Buckholtz's testimony.

16. Jury verdict was correct.

17. The court cannot second-guess the jury, must abide by the jury's decision.

18. Jury's verdict was proper and not inconsistent with the evidence.

Appendix F

19. Appellate Court cannot second-guess the jury.

To summarize appellee's argument, then, we can say that the appellant was a very bad lawyer in that he did not represent himself well, and did not present the evidence which supports his allegations. It does not, however, mean that the evidence does not exist, but that he failed to produce it. The second part of the appellee's argument is that the Judge and jury were right and proper in all respects and that their judgment was supported by the evidence.

The appellee produces a reference which tells us that:

> "The exercise of discretion by the trial Court when ruling on a Motion for New Trial "generally' will not be disturbed, except for "extraordinary" and "compelling" reasons."

The appellee then implies that this is not "extraordinary" or "compelling" so that the trial court "properly exercised" their discretion.

The appellant, of course, who was hit by the tractor-trailer disagrees with this and tells us that in his view it was not proper. The appellant here then is telling us that the judgment handed down in this particular case represents an "extraordinary" and "compelling" reason for altering the verdict and in this respect is absolutely correct. Nothing in the laws of the United States tells us that the judgment of Judges and juries are immutable so that the argument presented by the defense counsel is not exactly correct: for then there would be no appellate review.

Appendix F

The appellant will now prove, beyond all doubt, that the evidence itself which the defense counsel refers to in support of his position proves beyond all doubt that the jury verdict was erroneous and that the appellant's contentions were absolutely correct.

The defense counsel points to his "evidence" which is supposed to show that the appellant was not hurt at all.

Let us then examine this evidence on which the entire case for the defense rests. The evidence, so heavily relied upon by the defense, is the testimony of Dr. Buckholtz. Absent this testimony, the defense has absolutely nothing. Now, according to Dr. Buckholtz, Dr. Karim, whose opinion that the appellant has suffered brain damage, as a result of the accident, is wrong and what the appellant actually sustained is only soft tissue damage. Also, according to Dr. Buckholtz, Dr. Fitzgerald was also wrong in his diagnosis that the appellant had suffered a rupture of the inner ear or a perilymphatic fistula. Now, Dr. Buckholtz also tells us that the testimony of Dr. Keller, who diagnosed the appellant as being in a mental state which has moved from anxiety to depression, is also wrong and that the depression symptoms are part of the scam since it's very difficult to maintain a scam.

Now what does Dr. Buckholtz tells us about the report which has been confirmed by Dr. Ghovanlou, who tells us that the appellant has suffered a rotator cuff tear? Here Dr. Buckholtz tells us that he cannot give an opinion on this matter since he never claimed to be an orthopedic surgeon. (App. 107a)

Appendix F

Now, if one man's opinion can overrule the opinion of three specialists, namely: Dr. Karim, Neurosurgeon, Board Certified, Chief of Neurosurgery at Prince George's Hospital Center with hospital privileges to practice at George Washington University Hospital, Washington Hospital Center, Laurel Regional Hospital, Doctor's Community Hospital and Washington Adventists Hospital.

Dr. Carl Keller, psychiatrist, University of Chicago, in practice since 1964, past Director of United States Public Health Service, Department of Psychiatry and in addition is also a doctor.

Dr. Dennis Fitzgerald, a specialist in otolaryngology (ear, nose, and throat specialist), Board Certified, has written twelve papers in his field including four papers on a condition known to specialists as perilymphatic fistula or a rupture of the inner ear. Dr. Fitzgerald is a top surgeon in his field and has performed approximately 600 surgeries on this very condition which is caused by either a sudden difference in air pressure such as experienced in a plan dive or a hard blow to the head. By the way, the appellant has never been in an airplane.

Now, all three of these specialists are wrong according to Dr. Buckholtz, also Board Certified, but who is a neurologist and who by his own admission is not a neurosurgeon, is not a psychiatrist, is not an ear, nose, and throat specialist, and by his own admission is not an orthopedic surgeon and who does not controvert the findings of Dr. Ghovanlou as to a rotator cuff tear. This assertion then made by the appellee's counsel that the plaintiff was not damaged in any way is erroneous.

Now, as pointed out earlier, even if Dr. Buckholtz, for the appellee, is correct and everyone else, with the exception of Dr. Ghovanlou, is wrong, his testimony still leaves the Appellant with cervical strain and a rotator cuff tear. Now can the argument put forth by the appellee's counsel, that the appellant was not hurt at all be taken seriously? Also, how can the Courts justify the fact that the appellant was awarded no compensatory damages? This verdict would indicate that if a person was injured due to someone else negligence they would have to think twice before getting medical treatment for their injuries.

4. PETITIONER'S COMMENTS REGARDING DECISION OF THE COURT OF SPECIAL APPEALS OF MARYLAND

In this judgment, the Honorable Judge Harrell, J. gives a very fair assessment of the shortcomings of the Appellant's efforts to persuade the Court that the verdict handed down by the Maryland Circuit Court was unfair, prejudicial, and unconstitutional in the same way that the appellant also stated the very same thing to the Maryland Circuit Court when he appealed his case to that same Court shortly after the verdict was read.

Here, the Honorable Judge mirrors the appellee's brief in that he is also reminding the appellant that he has failed to point to specific lines in the deposition testimony submitted with his brief. In addition, the appellant is reminded that he broke the rules relating to providing the complete trial transcript of approximately one thousand pages, and that the appellant's brief violates numerous Maryland Rules. The court, of course, recognizes the fact that the appellant is only "a lay person"

and that he is "unable to cope" with the technical requirements of proper and effective appellate procedure.

Under "Prologue" the Honorable Judge tells us that "We are mindful of the renewed public concern over impediments to meaningful access to the judicial system for the redress of all manner of legal grievances." Also, the Judge tells us that "This complexity, for the most part a necessary state justified quixotically by logic and clarity, sometimes even confounds attorneys," etc ... etc.

Now, certainly, the appellant having only a seventh grade education is no match for an attorney or a great Judge, and since the Judge admits that the complexity of the legislation is so great as to even confound attorneys, then what chance does a lay person have to defend his rights under such circumstances? Absolutely none.

Essentially, then the Courts are telling the appellant that his chance of persuading the Courts that his grievances have merit are slim to none.

Since the appellant has never appealed a case before in his whole life, he might as well not have filed an appeal at all and let his rights dissipate.

To all this, the appellant states the following:

The appellant tells us that judges throughout the United States tell people who claim that they did not know something that they "should have known it." Now, why cannot a citizen of the United States tell a court that the court

"should have known something" as well? In the case of the appellant, it is true he failed to point out every piece of testimony to the court. However, was the information so lacking that the court was unable to at least suspect that something was wrong?

The Court had at their disposal the verdict of the jury which gave the appellant no compensatory damages. The Courts also knew, from the appellee's brief and the appellant's brief, that there were doctors and doctor bills involved. Now would not this fact alone cause a little bit of doubt as to the fairness of the award? Most certainly.

Here, the Courts tell the appellant that he has been treated no differently than his predecessor in *Tretrick v. Layman*, 95 Md. App. 62 (1993). Apparently then anyone, who makes technical mistakes in his appeal will also get turned down, never mind the merit of each case. Of course, this is only fair since the Courts are supposed to treat people the same way under the same circumstances and that makes it all fair and just.

There is, however, one problem with all this and that is that the appellant would not have been in that situation if it was not for the fact that his rights were violated by the lower Court, placing him in that situation. The appellant then appealed his case in order to reverse a verdict which by every opinion known is a product of bias, passion or prejudice.

Now, if the judicial system of the State of Maryland is willing to accept as valid any fallacious argument such as that presented by the appellee's counsel, then the appellant's legal rights have been violated and as a citizen and because of the

injustice which has been thrust upon him, he now invokes his rights of due process and equal protection of laws given to him under the Fourteenth Amendment of the Constitution of the United States.

The appellant will now show that his rights under the Fourteenth Amendment of the U.S. Constitution have been violated.

As shown earlier under "Petitioner's Comments Regarding Defendants Response to Plaintiff's Motion for New Trial", Appendix E and using citations of *Thompson v. Cooper*, *Brannon v. Webster*, and especially *DeMoss v. Brown Cab Co., Inc.* which makes it abundantly clear that by definition, the failure to reverse this error of judgment results in a miscarriage of justice, which is exactly what happened in this particular case, and as a result justifying the appellant's contentions that his Constitutional rights have been violates. The only thing remaining then is to show how the Fourteenth Amendment applies to this particular situation. Now, according to the Amendment which states "nor shall any state deprive any person of life, liberty or property without due process of law; not deny to any person within its jurisdiction the equal protection of the laws."

In the case of due process of law, we note the opinion of *Herbert v. Louisiana*, 1926 272 U.S. 312, 71L Ed 270, 47 S Ct. 103, 48 ALR 1102 as follows:

> "Fourteenth Amendment to Constitution of the United States requires that state action shall be consistent with fundamental principles of

> liberty and justice which lie at basis of all our civil and political institutions."

Also, the opinion of *Ross v. Moffitt*, (1974) 417 U.S. 600, 41 L Ed 2d 341, 94 S Ct. 2437 as follows:

> "Under Fourteenth Amendment "due process" emphasizes fairness between state and individual dealing with state, regardless of how other individuals in same situation may be treated;"

Bolling v. Sharpe, (1954) 347 U.S. 497, 98 L Ed 884, 74 S Ct. 693, 53; Ohio Ops 331, Supp. op 349 U.S. 294, 99 253, 71 Ohio L Abs 584 opinion is as follows:

> "Concepts of "equal protection of Laws" and "due process of Law", although not always interchangeable, are not mutually exclusive, discrimination may be so unjustifiable as to be violative of due process."

We can easily see by these opinions that there is a relation between "equal protection" and "due process".

Now under equal protection, the opinion of *Southern R. Co. v. Greene*, (1910) 216 U.S. 400, 54 L Ed 536, 30 S Ct. 287 is as follows:

> "Equal protection of laws means subjection to equal laws applying alike to all in same situations."

Appendix F

Also, *Maxwell v. Bugbee*, (1919) 250 U.S. 525, 63L Ed 1124, 40 S Ct 2 opinion is as follows:

> "Equal protection of laws requires equal operation of laws upon all persons in like circumstances."

Now, what were the plaintiff's circumstances in the Circuit Court of Maryland? For one thing, he was in Court to recover for injuries obtained in an accident due to the negligence of the defendant. In order to determine the extent of these injuries, and by following the doctor's advice, he incurred medical bills. Now, all legal opinions tell us that such a person regardless of who he is should at least get compensated for these medical bills and if not it is a reversible error on the part of the Court as pointed out by the reference of *DeMoss v. Brown Cab Co. Inc.*, given in Appendix E, pg. 34a.

Is the judicial system of Maryland trying to tell the plaintiff in this case that everyone seeking recovery for medical bills which were determined to be proper, necessary and causally related by physicians and were never objected to by the defense or the Court gets the same treatment as the plaintiff?

One may now ask how did this denial of justice happen? The answer is that the Maryland courts, using their discretion, have decided to reinterpret the *Buck* decision and to redefine what is meant by "extraordinary" or "compelling" reason. Now, apparently, according to their definition, awarding zero compensatory damages in this situation is not an "extraordinary" or "compelling" reason to reverse this unconscionable verdict. The only problem with this, however,

is that this violently clashes with the decision of *Herbert v. Louisiana*, offered here which tells us that state action must be consistent with the fundamental principles of justice.

The appellant then has clearly shown that his Constitutional rights of due process and equal protection of laws have been violated — Judge Harrell, J. opinion not withstanding.

In closing, the petitioner would like to say that by a clever manipulation of opinions, whose application in this particular case results in an injustice has now become a Federal Question. The Honorable Judge tells us that the high courts of Maryland, referring to the Court of Appeals, said: "that the verdict may have been the result of compromise, or of a mistake on the part of the jury, is possible. But verdicts cannot be upset by speculation or inquiry into such matters." This opinion of course is in conflict with opinions of other high courts through out the United States, since this opinion tells us that a jury even has the right to take away citizen's rights given to them even by the Constitution of the United States.

While the petitioner realizes that such opinions may have some application in criminal cases, they are and should not be applicable to civil cases such as the instant case since here the plaintiff comes to court to exercise a legal right, or to obtain compensation for wrong that have been dome on him, and not for civil or criminal wrongs he has done to someone else.

Now, since the opinion of the highest court of Maryland which the Honorable Judge Harrell, J. has stated

above tells us that jury "verdicts cannot be upset" and since such a ruling violates the appellants federal rights of due process and equal protection of laws as well as his legal and civil rights he has no choice but to seek protection from the Federal courts. The appellant contends that this action by the Maryland courts also represents a state wrongful prosecution action and is grounds for removal.

APPENDIX G — BASIS FOR THE DECISION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND
[Given in Appendix B]

1. PLAINTIFF'S FEDERAL JURISDICTION INTERVENTION DEMAND

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICFT OF MARYLAND

August 3, 1998

Mary and Chris Aloupis, Pro se
6058 Red Squirrel Place
Waldorf, Maryland 20603
Plaintiffs

Vs.

John Joseph Roop
400 Chapel Court, Apt. 318
Walkersville, Maryland 21793

And

Cargill, Inc.
36 Pennsylvania Avenue
Walkersville, Maryland 21202
Defendants

: Civil No. MJG 99-2597

Petition
Federal Jurisdiction Intervention Demand

The Plaintiffs in the above captioned matter, Mary and Chris Aloupis, Pro se jointly petition the United States District

Appendix G

Court, claiming Federal jurisdiction over this case on grounds and in support therefore states as follows. This is an automobile accident related matter, which occurred on April 8, 1992.

The Plaintiff in this matter was rear-ended by the Defendant's 18-wheeler tractor-trailer that was traveling at a high speed approximately between 45-50 miles per hour. As a result of this accident, the Plaintiff sustained physical damage and permanent injuries. The case went to litigation on July 21-24, 1997, before the Circuit Court of Charles County, Maryland. After four days of trial and three hours of deliberation, the jury awarded the Plaintiff $2,000 for future medical expenses. In light of the proven damages, this inadequate verdict was appealed by Counsel for the Plaintiff requesting a motion for a new trial. The motion was denied, and also a motion for reconsideration was to no avail. Under the 30 day Maryland Statute, Plaintiff petitioned the Court of Special Appeals of Maryland. On December 17, 1997, the Court ordered the case to proceed without a prehearing conference. On March 24, 1998, Counsel for the Defendant advised the Defendant that oral arguments in this appeal would be scheduled between the 1st and 16th of June, and all parties would be notified of the date.

On April 21, 1998, Counsel for the Defendant was notified by the Court stating that the case had been placed on the Summary Calendar of the Court to be submitted on Brief and had been taken out of the assignment for oral arguments. No explanation of this decision was given by the Courts action to the Plaintiff.

Appendix G

Finally, on June 23, 1998 the Court notified the Plaintiff that his appeal was denied and that the Court had allowed the Lower Court judgement affirmed.

The Plaintiff clearly stated before this court that the Jury`s inadequate verdict rendered in the Lower court was discriminatory in light of the proven damages at the trial because of the Plaintiff`s ethnic background. Such verdict should never have been rendered. When the petition for a new trial and change of venue was granted for the case to proceed without a prehearing conference by the Court of Special Appeals, and later denied the appeal for a new trial when the Court rendered the final opinion. The Plaintiff`s claim that the Court ruled on point of law rather than points of documented facts, and proven damages in this matter.

The Court, by refusing to hear the Plaintiff`s oral arguments in order to air allegations, disputes, and grievances concerning this matter, has violated his civil rights, including the suppression of evidence. This action deprived the Plaintiff of due process clause that are guaranteed under the provisions and protection set forth the First and Fourteenth Amendments of the United States Constitution. The protection of every citizen in the nation is guaranteed regardless of religion, ethnic background, color or creed. In our judicial system, if we allow the flaw of law to prevail, then the interest of justice cannot be served.

Appendix G

COMPLAINT

Comes now the Plaintiffs, Mary and Chris Aloupis, Pro se and sues Defendants John Joseph Roop and Cargill, Inc., and in support therefore states as follows:

1. Plaintiff, Chris Aloupis is a resident of Charles County, Maryland, and a citizen of the State of Maryland.

2. Defendant, John Joseph Roop is a resident of Frederick County, Maryland, and a citizen of the State of Maryland. Defendant Roop was operating a tractor-trailer owned by Defendant Cargill, Inc. on the date, time and place of this accident.

3. Defendant Cargill, Inc. is incorporated under the laws of the State of Maryland with a principle place of business in Walkersville, Maryland in Frederick County in the State of Maryland. Cargill, Inc owned the tractor-trailer, which struck Plaintiff.

COUNT I – NEGLIGENCE

Plaintiff incorporates the allegations of Paragraphs 1-3 and further states as follows:

4. On April 8, 1992, at approximately 1:30 PM, Plaintiff was operating his 1992 Toyota pick-up truck northbound on Mattawoman-Beantown Road in Charles County, Maryland near its intersection with Council Oak Drive.

5. At that same time and place, defendant Roop was operating an International Tractor, pulling a Warren box trailer in the same general direction on the same road.

6. Plaintiff turned on his left turn signal and began to reduce speed and stopped in order to make a left turn on Council Oak Drive when Defendant failed to reduce his speed to avoid a collision with Plaintiff, and rear-ended his vehicle at a high rate of speed.

7. No negligence of Plaintiff contributed to this accident.

8. As a result of this accident, Plaintiff suffered severe personal injury requiring extensive medical treatment, endured substantial pain and suffering, extreme mental anguish, emotion disorders, as well as economic loss due to medical expenses. Plaintiff, to this day, continued to suffer with permanent injuries as a result of this accident.

Wherefore, Plaintiff demands damages of one million dollars ($1,000,000.00)

COUNT II – VICARIOUS LIABILITY

Plaintiff incorporates the allegations of Paragraphs 1-8 and further states as follows:

9. At the time and place of the accident, Defendant Roop was employed by Defendant Cargill, Inc.

Appendix G

10. At the time and place of the accident, Defendant Roop was acting within the scope of his employment as a driver for Cargill, Inc. **Wherefore**, Plaintiff demands damages in the amount of one million dollars ($1,000,000.00) under the theory of Respondent Superior.

FIRST AMENDED COMPLAINT

COUNT III – LOSS OF CONSORTIUM

Plaintiff incorporates the allegations of Paragraphs 1-10 and further states as follows:

11. Plaintiff, Mary Aloupis, was at the time of the accident, and still is the lawful wife of Plaintiff, Chris Aloupis.

12. The negligent conduct of the Defendant Roop, more specifically described above, caused injury to the marital relationship of the Plaintiffs, including a loss of society, affection, assistance, companionship, and loss of sexual relations. **Wherefore**, the Plaintiffs demand damages in the amount of three hundred and fifty thousand dollars ($350,000.00). **Wherefore**, Plaintiffs demand damages of one million three hundred fifty thousand dollars ($1,350,000.00) under the theory of Respondent Superior.

Appendix G

TRIAL COURT DEMAND

Comes now the Plaintiffs, Mary and Chris Aloupis, respectfully requests that the above captioned matter be tried by the Trial Court on all counts and to be decided by Court and resolved.

CONCLUSION

The Plaintiffs pray the Honorable Court review this matter on the grounds of credibility, evidence, and merits presented and award the appropriate relief to resolve this case.

Respectfully submitted

/s/ Chris Aloupis
Chris Aloupis, Pro se

And

/s/ Mary Aloupis
Mary Aloupis
6059 Red Squirrel Place
Waldorf, Maryland 20603
(301) 843-8031

Appendix G

2. U.S. DISTRICT COURT'S SHOW CAUSE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARY ALOUPIS, et ux	*	
Plaintiff	*	
vs.	*	CIVIL ACTION NO. MJG-98-2597
JOHN JOSEPH ROOP and CARGILL, INC.	*	
Defendants	*	

* * * * * * * *

SHOW CAUSE ORDER

It appears from the face of the Complaint that the Court may not be able to obtain jurisdiction in this case.

The Plaintiffs seem to be asserting that they were improperly treated by the Court of Special Appeals of Maryland. However, they are not suing that court I the instant case. Moreover, there does not appear to be any basis for a suit against that court since the Plaintiffs here would have had the ability to petition the Maryland Court of Appeals for any relief to which they may have been entitled.

In this case, the Plaintiffs are suing the names Defendants for injuries sustained in a vehicular accident, i.e. presenting state law claims. The only discernable potential basis for federal jurisdiction would be diversity of citizenship.

Appendix G

There are three reasons why, from the face of the Complaint, it appears that this case cannot proceed.

First, it appears that the claim made in this case has already been adjudicated in the state judiciary. Second, it appears that the accident occurred in 1992 so that limitations would have expired for the bringing of this case. Finally, there does not appear to be any basis for federal jurisdiction since the Plaintiffs and one of the Defendants are stated to be citizens of Maryland. For this Court to have diversity jurisdiction, there must be a total diversity 28 U.S.C. § 1332. Here, with Maryland citizens on both sides of the case, there is a lack of total diversity which is fatal to diversity jurisdiction. Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978).

Under the circumstances, to avoid unnecessary paperwork and delay:

1. Plaintiffs shall, by August 26, 1998, show cause why this case should not be dismissed due to the lack of jurisdiction, the prior adjudication of this case in state court, and the expiration of the limitations to the file the suit.

2. Said showing of cause shall be made by filing a statement of the specific facts and specific legal authority upon which Plaintiffs rely to assert that federal jurisdiction exists and that this case may be pursued.

3. If Plaintiffs do not show cause in compliance with this Order, this case shall be dismissed.

Appendix G

4. Service of process shall be withheld pending further Order.

SO ORDERED THIS 6TH day of August 1998.

/s/ Marvin J Garbis
Marvin J. Garbis
United States District Judge

Appendix G

3. PLAINTIFF'S REPLY TO SHOW CAUSE ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

August 24, 1998

Mary and Chris Aloupis, Pro se
6058 Red Squirrel Place
Waldorf, Maryland 20603
Plaintiffs

Vs.

John Joseph Roop
400 Chapel Court, Apt. 318
Walkersville, Maryland 21793

And

Cargill, Inc.
36 Pennsylvania Avenue
Walkersville, Maryland 21202
Defendants

Civil Action No. MJG-98-2597

REPLY TO SHOW CAUSE ORDER

Comes now the Plaintiffs Mary and Chris Aloupis Pro se jointly entering a Reply to Show Cause Order as requested by the honorable Marvin J. Garbis, United States District Judge. In reference concerning this matter and in compliance with the

Appendix G

Courts demand, claiming Federal jurisdiction and intervention in the above captioned matter, and therefore, states as follows:

The demand for Federal intervention and jurisdiction rounds over this matter derived from grievance, disputes, allegations, and violations of law as outlined in this Petition, Complaint, and first amend Complaint, and all of the particulars submitted for the Courts review.

The Plaintiff in this Show Cause Order, therefore, states as follows:

We as citizens of this State and Nation, when we have grievance to air or to dispute, we exercise our rights before a court of law to decide the issues before them in an impartial manner, and we expect the law to punish the guilty party and exonerate the innocent party. This did not occur in this matter. This case stems from the inadequate Jury verdict from the lower court through the final decision and opinion from the Court of Special Appeals refusing to grant the Plaintiffs a new trial and change of venue. The Plaintiffs did not receive a fair trial and the Court's negative position in this matter in light of the proven damages and $50,000.00 of medical bills including permanent injuries documented by six physicians opinions, depositions, and oral testimony, submitted for the record for the Court's review. These the Court cannot ignore.

In this Order, the Court states that from the face of the complaint the Court may not be able to obtain jurisdiction in this case. It also states that the Plaintiffs seem to be asserting that they were improperly treated by the Court of Special Appeals of Maryland. However, they are not suing that Court in the instant case, moreover, there does not appear to be any

basis for a suit against that Court since the Plaintiffs here would have had the ability to petition the Maryland Court of Appeals for any relief to which they may be been entitled and quote.

The Plaintiffs would like to set the record straight for the Court in this case:

1. The demand for Federal jurisdiction and intervention is due from the lower Court's position not to award a new trial regardless, and in light of the inconsistent verdict reached by the Jury. Also, the Court of Special Appeals negative opinion when they denied the Plaintiffs a new trial and a change of venue has created a miscarriage of justice by refusing to allow the case to proceed after the Court had awarded oral arguments and later suppressed them.

2. When the County and State Courts refused to settle issues before them, as in this case and by violating Civil and Constitutional laws including the Rights of citizens the burden to resolve matters and the responsibility lies with the Federal Courts.

3. The technicality and points of law are many. The points of actual and documented facts are a few in comparison, but effective. The question before this Court is to decide if the points of law supersede the points of facts and documented evidence presented.

4. The Plaintiffs are not suing the Court of Special Appeals in this instant case, the reason being the quarrel is not with the Court but rather with the Defendants in this matter. The ability to petition the Maryland Court of Appeals as stated in this matter. The ability to petition the Maryland Court of Appeals as stated in this order for any relief to which the Plaintiffs may have been entitled. The Plaintiff was informed by the lower court that any case deriving from the Circuit Court trial by Jury would be appealed to the Court of Special Appeals and not to the Court of Appeals.

In the Show Cause Order, the Court states and clearly outlines and defines the three reasons why from the face of the complaint it appears the case cannot proceed.

The case has already been adjudicated in the State Judiciary. The accident occurred in 1992. The limitation would have expired for the bring of this case and finally does not appear to be basis Federal jurisdiction since the Plaintiffs and one of the Defendants are stated to be citizens of Maryland for the Court to have diversity jurisdiction.

The Plaintiffs responded to the accident in question and state the following. The accident occurred April 8, 1992 and under Maryland three year statute for filing. The complaint was filed September 1994 and after two postponements, the case was set for trial from July 21-24, 1997. Motions for new trial and appeals to the Court of Special Appeals ended June 23, 1998 when the final opinion from the Court was rendered. The petition and complain with the United States District Court was filed on August 3, 1998. The matter has been under

litigation the entire length of time and no statute was violated in this matter by petitioning the Court.

The questions concerning the diversity issue – the Court states there does not appear to be any basis for Federal jurisdiction since the Plaintiffs and one of the Defendants are stated to be citizens of Maryland. For this Court to have diversity jurisdiction, there must be total diversity 28 U.S.C. § 1332 here with Maryland citizens on both sides of the case citing a lack of total diversity which is fatal to diversity jurisdiction Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365 (1978).

The questions for the Court that the Plaintiffs raise in this matter in reference to diversity jurisdiction and Maryland citizenship on both sides of the case – is it relevant in this case? Does it apply in this matter? Since each case has to be judged within its own merits, the above captioned matter is accident related. There are physical damages and permanent to the Plaintiff caused by the Defendants negligence. The citizenship issue, the Plaintiff feels should have no bearing in this matter. We take life for granted until we are confronted with a tragedy of this magnitude and then we try to understand the question who is responsible for our lives, homes, and families since no one is willing to take the responsibility including the Courts.

The Plaintiffs furthermore state that the matter cannot be closed and the defendants allowed to prevail. The Honorable Court must try the case and resolve it.

Appendix G

PLAINTIFFS FINAL STATEMENT

In this complaint, Plaintiffs pray as outlined in the conclusion, that the matter be put to rest by the Honorable Court, by granting them the opportunity to air their disputes and grievances before the Court. However, if the Court decides to deny their request for trial as stated in the Order to Show Cause, the Plaintiffs will have no recourse but to exercise their Constitutional rights and continue with the appeal through the entire Federal Justice System, but not limited in scope including the United States Supreme Court, so that justice may prevail.

The Plaintiff, Chris Aloupis, also states for the Courts record in that matter that in 1994 he was a candidate for the States highest office, opposing Parris N. Glendening for Governor of Maryland.

Appendix G

CONCLUSION

The Plaintiffs, in the above captioned matter, pray to this Court that the Honorable Marvin J. Garbis in good faith, conscious, and wisdom at his discretion spare the Plaintiffs from any further litigation and appeals and allow this matter to proceed for trial in order to resolve the ordeal that has claimed their lives for the past six years.

Respectfully submitted

/s/ Chris Aloupis

Chris Aloupis, Pro se

And

/s/ Mary Aloupis
Mary Aloupis

Appendix G

4. PETITIONER'S COMMENTS REGARDING JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

In the "Petition Federal Jurisdiction Intervention Demand" the plaintiff in this case tells us that he was injured in an automobile accident when he was rear-ended by a tractor-trailer and that for injuries sustained he received an inadequate award. Further, he contends that in appealing his case, he was not allowed to present oral arguments which were first scheduled and later had to be submitted on Brief only.

The plaintiff also states that by refusing to hear his oral arguments, the Court of Special Appeals of Maryland has deprived the plaintiff of his Constitutional rights of due process of law given to him under the First and Fourteenth Amendments of the U.S. Constitution. Here, of course, the plaintiff does not tell us how the First Amendment or even the Fourteenth Amendment applies in this case although it is well known that justice is very well imbedded in the Fourteenth Amendment's due process clause.

It is obvious here that the plaintiff has failed to make a good case for himself and has not justified the intervention of the federal courts. For one thing, there are perhaps hundreds of thousands of citizens who get inadequate awards; this, however, does not mean that their case can go to Federal courts.

Appendix G

In plaintiff's "REPLY TO SHOW CAUSE ORDER", he makes the following points:

1. The plaintiff "did not receive a fair trial" in the state courts.

2. The plaintiff had $50,000.00 in medical bills and other "proven" damages. In the plaintiff's "Intervention Demand", he had mentioned that the courts had awarded him $2,000.00 for future medical expenses.

3. The plaintiff also states that since the accident he met all the statutes of the state courts and has been litigating his case since it went to trial in July of 1997.

4. On the diversity issue, the plaintiff asks the court "is it relevant in this case?" "Does it apply in this matter?"

DISCUSSION

As is well known, diversity jurisdiction was set up by Congress to insure that citizens would not encounter prejudice in courts of different states. Now, a citizen who has diversity of citizen with another citizen can go to Federal courts to litigate his case, and, in principle, should have no more or less civil rights than a citizen who has to litigate his case in state courts; this is so since courts more or less use a common law.

Now U.S. District Court judges are certainly qualified to judge diversity personal injury cases arising in automobile accidents and most certainly would know the common laws involved. Now is this particular case, the plaintiff tells the federal courts that in his personal injury case he had

$50,000.00 in medical bills and received an award of $2,000.00 for future medical treatment (however, on record it is shown as pain and suffering, somehow there was a misunderstanding after the verdict was announced). This verdict then awards the plaintiff no compensatory damages even though one of the plaintiff's injuries was diagnosed with absolute certainty and was never controverted by experts as well as medical bills which were deemed to be necessary and proper by expert witnesses and were never objected to by the defense or the court.

Now, based on the inability of the plaintiff to show how his federal rights were violated and his inability to raise a federal question properly, the Honorable Judge Garbis of the U.S. District Court rendered the opinion shown in this petition which tells us that federal courts have no jurisdiction over this case and one of the reasons given is that the case has been fully litigated in state courts. The Honorable Judge also points out that there is no diversity of citizenship.

The plaintiff, however, is asking the U.S. District Court for a new trial in the federal courts since his Constitutional rights were violated by the judicial system of Maryland.

The questions of course here is, has a federal question been raised by the plaintiff allowing him to enter the U.S. District Court and is he allowed to do so.

Under 28 U.S.C. § 1257, the petitioner offers the following opinion as to the manner of raising federal questions

as found in *Dewey v. Des Moines*, (1899) 173 U.S. 193, 43L Ed 665, 19S Ct. 376:

> "No particular form of words or phrases is necessary to comply with requirement that Federal right be specially set up or claimed.

Under 28 U.S.C. § 1331, the following opinion in *Bush v. State Industries, Inc.*, (1979, CA6 Tenn) 599 F2d 780:

> That complaint may not state claim upon which relief can be granted is of no relevance to question of subject matter jurisdiction under 28 U.S.C. § 1331. *Bush v. State Industries Inc.*, (1979, CA6 Tenn) 599 F2d 780.

Under 28 U.S.C. § 1331 – Duty to exercise jurisdiction the following opinion is offered:

> "Where jurisdiction of court is invoked on grounds which if true spell out existence of federal jurisdiction, cause must be entertained for purpose of fully determining merits either by way of motion or, by trial." *Dry Creek Lodge, Inc. v. United States*, (1975, CA10 Wyo 515 F2d 926, 20 FR Serv 2d 940.

Here the plaintiff contends that the awarding of $2,000.00 for $50,000.00 and other uncontroverted injuries is basically unfair and unjust and should be recognized by judges of the U.S. District Courts as violating a citizens legal and constitutional rights of due process of law and also that, numerous cases, or that a large body of opinion, states that

such an award represents a reversible error. It should also be recognized by judges that citizens in general, whether under federal, civil, or state civil laws, are normally not treated the same way under the same circumstances as the plaintiff; so that the plaintiff's federal rights of equal protection of laws under the Fourteenth Amendment of the U.S. Constitution have also been violated by the judicial branch of the Maryland state government.

In Appendix F, "Petitioner's Comments Regarding Decision of the Court of Special Appeals of Maryland" pg. 55a the petitioner outlines why he was forced to seek protection in the federal courts as well as how the Fourteenth Amendment to the U.S. Constitution applies to his case.

In response to the Honorable Judge Marvin J. Garbis' comments, the petitioner will try to answer the three concerns raised by the Honorable Judge.

1. In the case of the time limitation to bring the suit to federal court, the petitioner states the following:

> The accident, which is the basis for his suit, occurred on April 8, 1992, the complaint was filed on September 1994, which is well within the three year statute limitations of the State of Maryland. This period was necessary in order to determine the extent and permanency of his injuries and was taken upon the advice of counsel.
>
> From September 1994 until the trial date of July 21-24, 1997, the defense counsel asked

and was granted several extensions so that after two postponements, the case went to trial. Here we notice that the defense was most certainly not anxious to go to trial and as a result, the plaintiff was injured in many ways. For one thing, the plaintiff" primary physician passed away as well as one of the witnesses who witnessed the accident.

Now, the need underlying the enactment of statutes of limitations is the belief that a defendant should not have to worry about the possible commencement, in the future, of an action against him. In this case, however, and possibly in all personal injury cases, it is of great benefit to the defense to prolong bringing the case to court, as it was in this instant, so that in this particular case it was the plaintiff who had all the hardships rather than the defendant.

To summarize what has been said here, all the Maryland statutes of limitations, including the appeals to the Maryland Court of Special Appeals, were properly met by the plaintiff-appellant in this case. Here the petitioner would like to offer the following reference from *Mitchell v. Josephs' Supermarkets, Inc.*, D.C. Pa 1989, 712 F. Supp. 59

> "A federal court cannot dismiss an action that was timely filed in a state court according to state rules."

Appendix G

> The petitioner would also like to mention at this time that he had no idea in advance that he would be forced to petition the federal courts for relief.

2. In the case of the prior adjudication of this case in state courts, the petitioner asked the federal courts for relief after the verdict of the Maryland Court of Special Appeals. Now since his case was not appealed to the highest court of Maryland, his case was not fully litigated before he applied for removal.

The petitioner can only offer the following reference *Wujick v. Dale & Dale, Inc.*, C.A. 3d 1994, 43 F3d 790 and *National Union Fire Ins. Co. v. City Savs. F.S.B.*, C.A. 3d 1994, 28 F3d 376 with respect to this matter.

> "Determining the proper timing of removal pursuant to Section 1441a has created some difficulties for the federal courts. At least one court of appeals has held that there is no federal subject matter jurisdiction, let alone removal jurisdiction, ... Under that view, removal can not occur until the administrative process has been completed."

In this particular case, the petitioner had to wait until the judgment of the Maryland Court of Special Appeals was handed down; a judgment which caused him undue hardship since it forced him to take the action that he did.

Appendix G

After reading the opinion of the Court of Special Appeals of Maryland and not wanting to lose his rights, he felt that he had no choice but to seek protection in the U.S. District Court.

3. In the matter of diversity of citizenship, the petitioner strongly believes that he is entitled to enter the federal courts under Federal Question Jurisdiction since he strongly believes that his civil and Constitutional rights were violated by the Maryland state courts.

The petitioner also believes that, although his case only presents state law claims, the wrongful prosecution of his case by the state courts and by the application of state laws which resulted in the denial of his Constitutional rights as well as his civil rights qualifies him to enter the federal courts for protection.

At least one federal court has held that removal is proper when a plaintiff files a wrongful prosecution action in *Sweeney v. Abramovitz*, D.C. Conn. 1978, 449 F. Supp. (Newman J.).

As a final response to the points raised by the Honorable Judge Garbis of the U.S. District Court, the petitioner would like to make the following statement.

The petitioner states that his particular case, like all civil cases between two citizens, has two aspects. The first aspect itself which is the original complaint is purely a state matter as pointed out by the Honorable Judge. The second aspect, however, has to do with the judicial system of Maryland and it is this aspect and system the petitioner

strongly refers to and which he has shown has denied him his legal rights and has violated his Constitutional rights of due process and equal protection of laws given to him by the Fourteenth Amendment of the U.S. Constitution.

Now, after reading the opinion of the Court of Special Appeals of Maryland which expresses the views of the highest court of Maryland (Court of Appeals) the petitioner felt that he had no chance to obtain justice in the State of Maryland so that in order to protect his legal rights, and Constitutional rights he had to seek relief in the federal courts. Here the petitioner feels that he is the only one under his circumstances who could make that decision. Was he wrong to do this? Did he have the right to try and protect his Constitutional rights? This is basically what this case for removal is all about.

The federal courts tell the petitioner they have no jurisdiction as a matter of law since the petitioner does not have diverse citizenship. However, the very purpose of diverse citizenship is to eliminate prejudice which citizens of one state may encounter if their case is litigated in another state so that prejudice is recognized as being unjust. Certainly then if a citizen is prejudiced by his own states judicial system then this act can certainly not be justified on the basis that it is of no matter.

In this petition, it has been shown that the jury in the plaintiff's trial committed a prejudicial error and this verdict was not overturned by the judge or the Court of Special Appeals of Maryland based on Maryland law (according to the Honorable Judge Harrell J.). Now if the laws of a state are such as to deny citizens rights given to them by the U.S. Constitution, should those citizens be compelled to continue to

litigate their cases in the courts of that state and under those circumstances and under those laws?

Virginia v. Rives, 1880 100 U.S. 313, 25 L. Ed 667 tells us "Removal of cases from state courts to federal courts is acknowledged mode of protecting rights guaranteed under Federal Constitution."

Here the petitioner moved his case to the federal courts in an attempt to protect his Constitutional rights. Whether he has done something illegal or wrong is up to the great court to decide.

The petitioner here readily admits that he is at his wits end in that according to 28 U.S.C. § 1441 the right of removal is confined to defendants only; and this problem which the petitioner faces is reflected in the questions presented to the Supreme Court of the United States.

The Fourteenth Amendment tells us "nor shall any state deprive any person" ... etc., it makes no distinction between a plaintiff and a defendant. The petitioner as with all citizens in the United States who are the victims of negligence, was the plaintiff in this case so that according to 28 U.S.C. § 1441 his case cannot be removed, (according to the interpretation of this statute) which appears to contradict the Fourteenth Amendment of the U.S. Constitution; which extends protections from state justice to all people.

CONCLUSTION AND LEGAL AUTHORITY

The plaintiff contends that the Courts of Maryland have violated his civil rights and his constitutional rights given

to him by the Fourteenth Amendment of the U.S. Constitution so that he is requesting relief from the Federal Court system under Federal questions jurisdiction and under the statutory Grant 28 U.S.C. § 1331 and requests that his case be tried in the federal courts.

Although the plaintiff, in his response, did not make clear that he was entering the Federal Court system under the authority of a Federal question and merely stated that diversity of citizenship should have no bearing on the matter. However, as it turns out, under a Federal question jurisdiction Grant 28 U.S.C. § 1331 the question of diversity of citizenship is immaterial since all citizens whose Federal rights have been violated have the right under this statute to enter the Federal courts without regard to the diversity issues: Citizenship Immaterial

Diverse citizenship was not essential to exercise of Federal question jurisdiction as shown in *Ames v. Kansas*, (1884) 111 U.S. 449, 28 L Ed 482, 4 S Ct.; *Duignan v. U.S.*, 1927, 47 S. Ct. 566, 567, 274 U.S. 195, 197, 71 L Ed. 996; and *Keokuk & Hamilton Bridge Co. v. Salm*, 1922, 42 S. Ct. 207, 258 U.S. 122, 124, 66 L. Ed. 496

Under Grant 28 U.S.C. § 1331, the plaintiff could also enter the Federal courts without exhausting state remedies if his federal rights are violated, although the question presented in this petition to the U.S. Supreme Court is of importance here.

Appendix G

Lane v. Wilson, (1939) 307 U.S. 268, 83 L Ed 1281, 59 S Ct. 872 tells us:

> "Barring only exceptional circumstances or explicit statutory requirements, resort to Federal court could be had without first exhausting judicial remedies of state courts."

Also, *Laclede Gas Light Co. v. Public Service Commission*, (1934 DC Mo) 8 F Supp. 806 tells us:

> "Where state commissions ordered reductions without due process and with alleged confiscatory results, federal district court could grant injunctive relief although remedies in state court had not been exhausted."

Under Grant U.S.C. § 1331 — Effect of state law on jurisdiction generally where resort was had to federal court not on grounds of diversity of citizenship, but because federal right was claimed, limitations upon courts of state did not control federal court sitting in the state. (*Angel v. Bullington*, (1947) 330 U.S. 183, 91 L Ed 832, 67 D Ct. 657)

It is also instructive here to mention that: when a claim is alleged to arise under the Constitution or Laws of the United States, a federal court must not dismiss the claim for lack of jurisdiction unless it appears to a legal certainty, that the claim is fully insubstantial and frivolous insofar as the Constitution and laws of the United States are concerned. (*Grabinger v. Conlisk*, D.C. Ill., 1970, 320 F. Supp. 1213, affirmed C.A. 7th, 1972, 455 F. 2d 490)

Appendix G

Jurisdiction Not Lost — "But if the plaintiff really makes a substantial claim under and Act of Congress, there is jurisdiction whether the claim ultimately be held good or bad". *The Fair v. Kohler Die & Specialty Co.*, 1913, 33 S. Ct. 410, 228 U.S. 22, 25, 57 L. Ed. 716.

It now appears to the petitioner that in his particular circumstances, he had a right to appeal his case to the Federal courts, and in addition, the petitioner contends that since the same common law should be applied in federal courts to citizens which have diversity citizenship the federal judges should have known that the judgment made by the Maryland state courts, in this particular case, is so unjust as to violate the petitioner's legal rights as well as his constitutional rights of due process of law under the Fourteenth Amendment of the U.S. Constitution. See the reference *Herbert v. Louisiana* given by the appellant when he gives his reasons for entering the U.S. District Court under "Petitioner's Comments Regarding Decision of the Court of Special Appeals of Maryland".

Here, once again, we note that in the case sited above, namely *Grabinger v. Coulisk* that reference is made to the "plaintiff" which again implies that plaintiff along with defendants also have the right to enter federal courts; as it should be if the Fourteenth Amendment is to apply to all citizens.

APPENDIX H — BASIS FOR THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

1. **THE DECISION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND. THIS DECISION IS GIVEN IN APPENDIX B.**

2. **PLAINTIFF'S NOTICE OF APPEAL**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Mary and Chris Aloupis, Pro se 6058 Red Squirrel Place Waldorf, Maryland Plaintiff	: Civil Action No. MJG-98-2597
Vs.	: Filed September 15, 1998
John Joseph Roop 400 Chapel Court, Apt. 318 Walkersville, Maryland 21793	
And	
Cargill, Inc. 36 Pennsylvania Avenue Walkersville, Maryland 21202 Defendants	

Appendix H

NOTICE OF APPEAL

The Plaintiffs in the above captioned matter, Mary and Chris Aloupis, Pro se, jointly petition the United States 4th Circuit Court of Appeals, appealing the Order dated August 27, 1998 set forth by the Honorable Marvin J. Garbis on grounds and in reference to jurisdiction and diversity issues over this case and in support therefore states as follows:

In their petition filed with the United States District Court, dated August 3, 1998 for Federal Intervention demand, the Plaintiffs clearly have stated the issues, disputes, and allegations concerning this matter. The Plaintiffs understand that the Courts have long resented the representation of citizens on Pro se basis which they find very distasteful. The Plaintiffs claim they did not write the laws but merely exercise them as stated on this appeal.

The matter being accident related cannot be closed without a trial, since there are physical damages and permanent injuries documented by tests performed by various hospitals and clinics, doctor`s opinions, depositions, and oral testimony in Court records. The opinion, memorandum, and Order of Diversity Citizenship and Jurisdiction will not resolve this matter, and it is irrelevant. The Plaintiffs state that the negative position the Courts have taken, from the Circuit Court of Charles County not to award a new trial and a Change of Venue when motions were filed, to the Court of Special Appeals stating points of law. By refusing to question the facts and damages in this matter, not only has a

miscarriage of justice been created, but the Plaintiffs feel there is a conspiracy against the parties in this matter by the Courts in order to suppress their Constitutional rights, and by discouraging this matter from proceeding to trial. The Plaintiffs have requested Congressional assistance in resolving this problem, through the office of Democratic Congressman Steny Hoyer of Maryland in order to enact a statute providing Federal jurisdiction for their case.

CONCLUSION

The Plaintiffs in the above captioned matter demand that the Honorable Marvin J. Garbis order dated August 27, 1998 be set aside and allow the case to proceed to trial in the Lower Court in order to be resolved and the appropriate relief be granted to the Plaintiffs.

Respectfully submitted

/s/ Chris Aloupis
Chris Aloupis, Pro se

And

/s/ Mary Aloupis
Mary Aloupis

Appendix H

3. PLAINTIFF'S – APPELLANT'S PETITION FOR REHEARING OF JUDGEMENT

UNITED STATESCOURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 98-2408
CA-98-2597-MJG

Mary Aloupis : Chris Aloupis

Plaintiffs – Appellants

v.

John Joseph Roop : Cargill, Incorporated

Defendants – Appellees

PETITION FOR REHEARING OF JUDGEMENT

Comes now the Plaintiffs in the above captioned matter, Mary and Chris Aloupis, Pro se, jointly and filing this Petition for Rehearing of Judgement with the Honorable

Appendix H

United States 4th Circuit Court of Appeals in this matter and in support therefore state as follows:

On September 15, 1998, a Notice of Appeal was filed with this Court appealing the order dated August 27th, 1998 set forth by the Honorable Marvin J. Garbis on grounds and in reference to jurisdiction and diversity of citizenship in this case. The Court requested that the Appellants submit an informal Brief for the Court to review. The Brief was filed on October 2nd, 1998. The Appellants were informed by the Court that the Court would consider the Appeal according to the written issues, facts and arguments Appellants presented in the Brief. On November 18, 1998, the Appellants received a Notice of Judgement stating that the Judgement was entered and that the Court dispensed with oral arguments because the facts and legal contentions are adequately presented in the materials before the Court and arguments would not aid the decision process, thus affirming the lower Courts judgement.

The Appellants in this case respectfully rebuttal the Note of Judgement rendered by the Court, and will challenge the Courts findings on the following grounds and as follows:

The Courts decision to dispense with oral arguments citing that the facts and legal contentions were adequately presented in the materials before the Court, but if this Court had reviewed the facts that the Appellants had stated during the entire appeal, such judgement would not have been entered. All of the material related to this matter can only be

presented before a Trial Court. No material of any kind has been submitted to this Court or the Lower Court, other than the petition with the United States District Court Notice of Appeal and an informal brief for review with this Court. Such materials as depositions from physicians, copies from the trial transcript of oral testimony in the lower Court, or verification of tests performed on the Appellant that support the facts in this case have ever been submitted in the Federal Courts in order to make an accurate evaluation in this matter, as well as not being requested by the Court.

The Appellant, on his petition dated August 3, 1998 of Federal Jurisdiction Intervention with the United States District Court, has stated clearly that the Jury's verdict was prejudicial in this case because of the Appellant's ethnic background, by refusing to abide by the evidence and facts presented during the entire trial thus violating his civil and constitutional rights.

The Appellant would like to be more specific by mentioning the following:

1) Jury prejudice due to Appellants' ethnic background which was revealed during the trial.

2) This is also revealed by the fact that the Jury did not compensate Appellant even for medical expenses, which totaled $50,000.00 and in light of the proven damages, a fact which came as a complete surprise even to the presiding Judge.

3) The facts of the case were completely ignored by the Jury. The Jury, in reaching their decision, chose to believe the opinion of the Appellee's physician, who performed no medical, tests whatsoever on the Appellant in order to determine his physical condition. The jury completely ignored the testimony of three physicians who ran thorough diagnostic test on the Appellant and then rendered their opinions.

4) The Jury's decision was not based on the merits of the case which was presented in Court under oath, but rather on their perception of the Appellant and the physicians who examined him and the results of the numerous tests performed during the many office visits.

5) The Jury's prejudice is also evident by the fact that they chose to believe that a motorist who gets rear-ended by a tractor trailer moving at a speed of 45-50 miles per hour, which is equivalent to getting hit by a normal car moving at the speed of 70 miles per hour and who has a negligible chance of not being injured over the fact that it is almost impossible for such a motorist to survive much less come out of such an accident without any injuries, is clearly an indication of the highest order of prejudice which should be evident to anyone.

6) The presiding Judge, although surprised by the verdict of the Jury, condoned their decision by allowing this unjust verdict to stand. When a Motion for New Trial and change of venue were filed and this request denied, it would cause anyone to question our whole system of justice.

7) Since the Judge's decision has been allowed to stand by the Higher Courts, the interest of justice cannot be served, and has not been served.

APPELLANT'S FINAL ARGUMENTS

The Appellants in their final arguments before this Court states as follows:

From the Court of Charles County, to the Court of Special Appeals of Maryland, to the United States District Court, and finally to the United States Court of Appeals for the Fourth Circuit, the Courts have chosen clearly to allow the points of law to supersede over the points of actual documented facts and proven physical damages by suppressing evidence pertinent to this case, and by denying the Appellant a fair trial in order to air arguments and grievances before the trial in order to air arguments and grievances before the trial Court, and for the Court to resolve this matter. For the Courts to continue to ignore the facts in this matter, then the negative approach is a violation of the Appellant's civil and Constitutional rights, due process clause set forth by the and under the provisions of the first and fourteenth amendments of the United States Constitution.

Appendix H

The Appellant will never abandon this case until the Courts resolve it, because of the physical and permanent damages as a result of this accident has destroyed the Appellant's life because of the Appellee's negligence. The case will continue through the entire Federal justice system, the United States Supreme Court, and if the Courts continue to deny this matter to proceed to trial, the Appellant will seek a presidential decree to compel the Courts to resolve this matter. The Appellant does not wish to cause any embarrassment to the Federal justice system, but if the Courts make it necessary to do so, the Appellant will file suit against the Federal justice system on grounds of discrimination, civil rights violations, and constitutional law. The technicalities of law should not be allowed to prevail in this matter. Under our justice system, appeals are filed because of inadequate verdicts or an opinion rendered by the lower Court, as in this case. If appeals or petitions for review have no merits in the law then who do we turn to seek justice?

CONCLUSION

The Appellants in this case pray to this Court to allow the facts in this matter to prevail and allow this matter to proceed to trial in order for the trial Court to resolve it.

Respectfully submitted

/s/ Chris Aloupis
Chris Aloupis

Appendix H

4. PETITIONER'S COMMENTS REGARDING JUDGEMENTOF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

In his NOTICE OF APPEAL it is obvious that the petitioner, being a lay person, does not fully understand the significance of jurisdiction and the part it plays in our court system. Further proof of the petitioner's misunderstanding of the difference between the state courts and the federal courts is his dialogue in his PETITION FOR REHEARING OF JUDGEMENT where he wonder how the federal courts can decide his case without examining "depositions", "trial transcripts", etc. Here the petitioner does not realize that the federal courts are merely trying to establish jurisdiction and having failed to convince the Court of Appeals for the Fourth Circuit, that the Honorable Judge Garbis, of the U. S. District Court, was mistaken the court had no choice but to turn down his appeal.

In his defense, the petitioner would like to say that he failed again to make a very good case for himself and he hopes that the Supreme Court will look beyond the words and phrases appearing in his past appeals to the courts in order to determine the petitioners real grievance. In his appeals, the petitioner has tried his best to describe his case just as it happened in the state courts with the hope that the federal courts would be able to determine whether they could, according to the laws, give the petitioner some relief from the judgment of the state courts. However, even though the petitioner has failed in litigating his case, he would like to state the reasons which forced him to seek relief from the state courts.

Appendix H

1. The award received for his injuries is so inadequate as to represent, by all know opinion, a reversible error. Which indicates that such judgment is illegal and depriving him of his legal rights to obtain compensation for the proven damages which he incurred.

2. The Maryland Court of Special Appeals, using color of state law has violated his Constitutional rights and civil rights. Constitutional rights given to the petitioner by the U.S. Constitution. In addition, the Maryland Court of Special Appeals violated the petitioners civil rights given to him by an Act of Congress namely: 42 U.S.C. § 1983 in that by a clever manipulation of state law took away his legal rights to recover damages. In addition, the Maryland Court of Special Appeals violated the petitioner's Constitutional rights of due process of law by forcing the Pro se petitioner to litigate his case only on brief; by denying him oral arguments.

"Due Process of Adequacy"

> "The Supreme Court reversed ruling that the state court had denied the plaintiff due process in the "primary" sense of an opportunity to be heard and to defend it substantive right." Opportunity to be hear 50 S. Ct. at 454 281 U.S. at 681 (per Brandeis, J.).

Basically, then the Maryland courts were very unfair and unjust; which are the basic principles upon which due process of law rests.

3. The final reason the plaintiff offers for removing his case from state court is to be found in the opinion given by the Honorable Judge Harrell, J. of the Maryland Court of Special Appeals which is given in Appendix C and which quotes the highest court of the state of Maryland quote: "As the Court of Appeals stated [,] ... that the verdict may have been the result of compromise, or of a mistake on the part of the jury, is possible. But verdicts cannot be upset by speculation or inquiry into such matters."

Now this statement is clear and concise and leaves no room for interpretation. The highest court of Maryland then is speaking through the honorable Judge and is telling the appellant that the jury verdict, which by every other opinion known to the petitioner represents a reversible error, will not be reversed and, furthermore, the petitioner, according to the laws of Maryland, had lost his rights both civil and Constitutional.

The Honorable Judge Garbis of the U.S. District Court implies that the plaintiff does not have a removable case but that if the plaintiff had diversity citizenship, even though his case is an automobile accident case, the plaintiff could have had his case removed and tried in the federal courts. The honorable judge further implies that the plaintiff would have had a case against the Maryland judicial branch of

government, presumably under civil rights statute 42 U.S.C. § 1983, but for the fact that he failed to appeal his case to the highest court of the state (the Court of Appeals); he, therefore, loses his rights there as well.

To summarize what the petitioner understand of all this is that the defendant in his case gets off without any liability for the damages he has caused, the state courts have no liability for the rights they have violated and only the plaintiff who got hit by a tractor-trailer is the loser. However, the petitioner still feels that he federal courts have jurisdiction in his case since if they have diverse citizenship jurisdiction, which is based only on a perceived prejudice which is supposed to exist between the courts of one state and the citizens of another, they should also have jurisdiction in his case in which the prejudice of the courts of his state against him were actually real and supported by actual proof, and which prejudice, according to all well established opinion manifests itself in the jury's verdict. The petitioner then strongly believes that such verdict alone is sufficient to raise a federal question and to allow him to obtain a fair trial in the federal courts. As mentioned earlier:

> "Removal of cases from state courts to federal courts is acknowledged mode of protecting rights guaranteed under Federal Constitution." *Virginia v. Rives*, (1880) 100 U.S. 313, 25 L Ed 667

APPENDIX I — DEPOSITION AND COURT TESTIMONY OF THE PHYSICIANS FOR THE PLAINTIFF AND THE DEFENDANT

From the Court Testimony of Dr. Buckholtz (Neurologist) for the Defense

Dr. Buckholtz is questioned by plaintiff's counsel as follows:

Question: "Dr. Karim has testified that Mr. Aloupis suffered a brain injury. In your opinion is he wrong?"

Answer: "Yes, very much so."

The next question put to Dr. Buckholtz involved the findings of a Radiologist who studied the MRI scans (Dr. Mann).

Question: "You don't know anything about Dr. Mann, though do you?"

Answer: "Nothing."

Question: He read two separate MRI and saw that same one and half centimeter area that you did, correct?"

Answer: "Yes."

Question: "On both occasions, when he said it was either an old infarct or evidence of trauma, he was mistaken. Is that correct?"

Answer: "That is my opinion."

Appendix I

Question: "June 19, 1992, when he said that there was evidence probably representing an old infarction, he was wrong, Is that correct?"

Answer: "That is my opinion."

Question: "In your opinion, it shows a cyst?"

Answer: "Yes."

Question: "The emergency room physician that diagnosed cervical strain?"

Answer: "I don't disagree with that."

Note: Dr. Fitzgerald diagnosed the plaintiff as having a rupture of the inner ear causing him to have dizziness symptoms; symptoms which persist to this day.

Question: "You completely disagree with Dr. Fitzgerald about his diagnosis in this case. Is that true?"

Answer: "I completely disagree with Dr. Fitzgerald."

Question: "I must assume you agree with Dr. Ghovanlou's diagnosis of a rotator cuff tear?"

Answer: "That is an orthopedic, I am a neurologist. I have been careful to say that all along."

Appendix 1

Question: "Now it is your opinion, at that point in time nonetheless, he did suffer from cervical strain?"

Answer: "At what point in time?"

Question: "Right after the accident?"

Answer: "It can last up to a few months after an injury, yes."

PETITIONER'S COMMENTS

As can be seen by this testimony that the defense witness casts doubt on the findings of two of the plaintiffs' witnesses, but not the findings of the plaintiff's orthopedic surgeon, and the cervical strain diagnosis. Here the defense witness tells us that the abnormal indication of the brain MRS scan is a cyst. Now, of course, this brain cyst just happens to be in the exact same spot where the plaintiff tells us his head smashed against the rear window.

From the Sworn Deposition of Dr. Ghovanlou (Orthopedic Surgeon) for the Plaintiff – Examined by the Defense Counsel Mr. Goetsch.

Question: "When did you first see Chris Aloupis as a patient?"

Answer: "92."

Question: "Could you tell me when in 1992? You can refer to your file; your complete file is there in front of you."

Answer: "April 8, 1992."

Question: "Under what circumstances did he come to you in 1992?"

Answer: "He was in a car accident shortly before that. On April 8, 1992 he was in a car accident; on April 13, I saw him."

Question: "Okay, and when you conducted your examination of him in April of 1992 what did you find?"

Answer: "In April of 1992, he was seen here with pain around the neck area and shoulder, lower back."

Question: "Okay."

Answer: "And also headache and some symptoms related to nausea, dizziness. After the car accident, apparently he was taken to the local hospital where he was X-rayed given medication and a brace and was released home."

Question: "Did you treat him for the neck and shoulders, or did you treat all of these; or did you refer him to others for the headache and nausea?"

Answer: "Yes. After the second or third visit, I referred him to a neurologist. His symptoms continued."

Question: "Do you have any opinions about his presentation regarding his shoulder, what shoulder and what the problem was?"

Answer: "That was the left shoulder initially and he had pain and weakness, limitation of motion in the left shoulder. The X-ray. Was negative for fracture or dislocation. The MRI was suggestive of a partial tear of the rotator cuff and finally was confirmed with a arthrogram that he has a tear of the supraspinatus on the left side."

Question: "Is there any way to tell when that happened?"

Answer: "Initially when he came, his symptoms were related neck and left shoulder and lower back. So gain his problem started right after that."

PETITIONER'S COMMENTS

As noted, this sworn deposition was conducted by the defense counsel, Mr. Goetsch. Now in the defense counsels "DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR NEW TRIAL" (Appendix E, pg. 31a) the defense counsel tells the judge, the plaintiff "did not suffer any injury

at all". Now how can this be? And how can we reconcile this with the verdict in this case, especially when this sworn testimony was presented to the judge and jury in court and the defense counsel was aware of it; since he was the one who conducted it.

On the other hand, if the jury is going to disregard all evidence supporting the plaintiff and believe only the defense witness, doesn't this demonstrate partiality? Most certainly.

From the Court Testimony of Dr. Karim (Neurosurgeon) for the Plaintiff

Question: "In your medical opinion, was that second MRI necessary?"

Answer: "Yes, it was."

Question: "When you reviewed the second MRI, did you have any reason to believe that the film showed a cyst of some type in Mr. Aloupis' brain?"

Answer: "No, he doesn't have a cyst."

Question: "Why are you so certain about that?"

Answer: "Because I have seen his MRI scan."

Appendix I

Question: "So, to a reasonable degree of medical certainty within the field of neurosurgery, Mr. Aloupis does not have a cyst in that area of his brain?"

Answer: "Not that I know of."

Question: "Were you able to reach a conclusion as to what this abnormality meant at that point in time?"

Answer: "Well, that MRI, the subsequent MRI scan showed that there was that this patient had sustained, in my opinion, an injury to the brain as a result of the accident and that in his right cerebellum there is an area of abnormal signal intensity which looks bright on certain technique of the MRI scan."

Question: "Aside from this area of the brain where there is this unusual signal, did you have any other findings within your field of specialty of neurosurgery concerning Mr. Aloupis and injuries he suffered as a result of this accident?"

Answer: "Yes, I believe that Mr. Aloupis has suffered aggravation of his previous existing cervical spondylosis, which means that there were changes in this cervical spine, degenerative changes that were really compatible with somebody his age. But he was asymptomatic, he had no symptoms from those until the time of the accident. So I believe that he had aggravation of previously existing spondylosis in his neck."

Appendix I

From the Court Testimony of Dr. C. Keller (Psychiatrist) for the Plaintiff

Question: "Do you classify Mr. Aloupis' depression as mild, moderate or severe in this case?"

Answer: "I think it is mild to moderate in terms of the subjective symptoms. The great disfunction that he has, inability to work and so on, is not directly the result of the depression but appears to be more directly the result of the pain that he has."

Question: "Well let me ask you this: Do you have an opinion to a reasonable degree of certainty within the field of psychiatry as to the cause of Mr. Aloupis' depression?"

Answer: "According to the history that I elicited from Mr. Aloupis, he was well, working and very infrequently had cause to visit physicians in the previous 20 to 30 years. Following the accident in 1992, he had all of the pain and physical dysfunction that initially led to the anxiety and subsequently to the depression. I think that his symptoms followed the accident and are due to the pain and disability, the loss of work and income that resulted from that accident."

Appendix I

Question: "Doctor, when you examine patients, do you utilize some means to detect whether the patient is faking or feigning their symptoms?"

Answer: "The diagnosis is based on the history and finding at the examination. The possibility of falsifying them is approached by looking for consistency in what the patient tells me and at the same time."

Question: "When you say consistency do you mean from visit to visit?"

Answer: "From visit to visit, if he tells me pretty much the same thing each time, and that consistency has to be balanced against what I would regard a textbook descriptions, If someone wants to fool me by complaining of an illness, I would expect them to go read up about it and then try to do what he reads. But I think that would come across in a precise and stilted way. There wouldn't be any deviation.

As I mentioned before, with persons who are depressed, it is common for persons who are mildly to moderately depressed to be able for short periods of time to seem to enjoy themselves, feel free, not appear to be depressed, so that Mr. Aloupis, for example, could come in and sometimes tell me about humorous anecdotes and laugh when he told me. I don't

think that's an indication of his not being depressed, I think that's and indication that he hasn't been following a script."

Question: "All right. Did you have any indication in your visits that Mr. Aloupis was faking his pain?"

Answer: "Pain is a very difficult symptom to evaluate because pain is subjective. Nobody else can know what somebody else's pain is. So, I start by accepting what the patient tells me as being accurate. The only way that I could know that it is not accurate would be if I were to see him behave in a way that indicated that he was pain free."

Question: "Did you ever see him behave in such a fashion?"

Answer: "No"

Question: "Is the fact of Mr. Aloupis' complaint of pain consistent with you diagnosis of depression caused by that pain?"

Answer: "Yes."

Question: "Dr. Keller, do you have an opinion as you sit there today to a reasonable degree of psychiatric certainty as to whether Mr. Aloupis' condition of depression is permanent in nature?"

Appendix I

Question: Yes or no, do you have an opinion?

Answer: "Yes or no? Yes."

Question: "Could you please tell us what that opinion is?"

Answer: "That he is likely to stay depressed for some long time."

Cross-Examination by the Defense Counsel Mr. Goetsch Asking Dr. Keller

Question: "One of the things that you said that you thought he was anxious about was his inability to work and earn an income; is that correct?"

Answer: "Yes."

Question: "And that would seem to be a normal thing to be anxious about, an inability to earn an income; isn't that correct?"

Answer: "Yes."

Question: "Did Mr. Aloupis ever tell you that for the twenty years that his company was in existence, he never took any income from it?"

Mr. Finci (plaintiff's counsel): "Objection you honor"

The Court: Overruled.

Appendix I

Question: "(Again) the question was: Did Mr. Aloupis ever tell you that for the entire length that his company was in existence, I believe he said 1974 to 1994, on the stand he changed it to 1978 or 1979 to 1994, that he never took any income form the company?"

Mr. Finci: (plaintiff's counsel) Objection you honor. Same objection. Mischaracterizes.

The Court: Overruled.

The Witness: I didn't question him in detail about that.

Question: "Did he tell you that?"

Answer: "He did not tell me that, no."

PETITIONER'S COMMENTS

In this testimony, Dr. Keller is telling the court that, in his opinion, the pain and disability the plaintiff is experiencing and which also resulted in loss of work and income as a result of the accident is real, and that the symptoms followed the accident.

On the other hand, the defense counsel has found a clever way to bring into the court testimony and into evidence the plaintiff's finances and strongly implies to the courts that since the plaintiff never took any income from his company for 10 to 20 years, the depression could very well derive from this. The defense counsel then is trying to refute the testimony of the psychiatrist who testified that the pain is real and the

defense counsel is also trying to refute the testimony of the orthopedic surgeon who stated, with absolute certainty, that the plaintiff had a rotator cuff tear. The defense counsel further leads the court to believe that the depression had always existed in direct contradiction to all the lay witnesses produced by the plaintiff which testified to the contrary.

In bringing the financial condition of the plaintiff into evidence (although cleverly) the defense counsel has done something which is considered improper and prejudicial.

Note: "Generally, any admission of evidence concerning the financial standing, wealth, or property of either party is prejudicial error on the issue of compensatory damage." *Oakes v. Baker*, 85 Cal. App. 2d 168, 192 P. 2d 460 (1948). The rule was stated.

From the Court Testimony of Dr. Fitzgerald (Otolaryngologist) for the Plaintiff

Question: "Now, all those tests that you've just described, were they medically necessary in your opinion?"

Answer: "They were. If I was to discuss and examine Mr. Aloupis for the condition of dizziness, yes they were."

Appendix I

Question: "Now, not all of those tests were positive with respect to Mr. Aloupis. Why don't you describe which of those tests that you received results back from were significant in reaching your diagnosis with respect to Mr. Aloupis."

Answer: "There were three – two tests that were definitely abnormal and one test that was considered borderline abnormal."

Question: "Do you have an opinion to a reasonable degree of medical certainty within your field of specialty as to the condition that Mr. Aloupis suffers as a result of this testing?"

Answer: "Yes, I do."

Question: "What is your opinion to a reasonable degree of certainty within your specialty as to the condition he suffers?"

Answer: "My medical opinion in this case is Mr. Aloupis suffers from a rupture of the inner ear on the left side. This rupture is called a perilymphatic fistula and it is very commonly associated with head injuries."

Question: Once again, let me ask you, Doctor, on the basis of those things that have once again been raised by Mr. Goetsch, do you change your diagnosis today?"

Answer: "No, I don't."

Appendix 1

PETITIONER'S COMMENTS

Here, Dr. Fitzgerald tells us that the plaintiff has suffered a rupture of the inner ear on the left side, which just happens also to be on the same side as the rotator cuff tear diagnosed, with certainty, by Dr. Ghovanlou (the orthopedic surgeon).